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THE EXPEDITED FUNDS AVAILABILITY ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2443

A BILL TO LIMIT THE NUMBER OF DAYS A DEPOSITORY INSTITUTION MAY RESTRICT THE AVAILABILITY OF FUNDS WHICH ARE DEPOSITED IN ANY ACCOUNT

OCTOBER 9 AND 10, 1985

Serial No. 99-37

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THE EXPEDITED FUNDS AVAILABILITY ACT

WEDNESDAY, OCTOBER 9, 1985

House of Representatives, Committee on Banking, Finance and Urban Affairs, Subcommittee on Financial Institutions, Supervision, Regulation and Insurance,

Washington, DC.

The subcommittee met, pursuant to call, at 10:12 a.m., in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St Germain; Representatives Annunzio, Barnard, LaFalce, Schumer, Frank, Lehman, Cooper, Wylie, McKinney, Shumway, Wortley, Dreier, Parris, and Roukema.

Chairman St Germain. The subcommittee will come to order.

H.R. 2443 is based on the simple premise—that bank customers should have access to their funds as rapidly as modern technology will allow.

There are financial institutions that do lean over backwards to avoid lengthy holds on deposits. However, this committee continues to receive a heavy volume of complaints from consumers who have faced inordinate and unnecessary delays—2 and 3 weeks or even more on deposits even when cash, money orders and cashier's checks were involved.

For the well-heeled with big balances in their checking accounts, the need for this legislation may seem remote. But, for the factory worker, the salaried employee, the retiree of modest means and others who must pay their basic living expenses out of their weekly or monthly income, arbitrary check holds can be a disaster.

The legislation has a real meaning for Mrs. Lucy Cody of Boston. Last year, she deposited $1,413.45 in a Boston bank. Most of those deposits were in cash, but about $400 was in checks and an American Express money order. Mrs. Cody assumed that the deposits, since they had included a preponderance of cash—would be credited without delay. So she proceeded to write checks on the account, only to have the checks returned. She ended up with $296.30 in return check fees and the embarrassment of having checks for such items as her son's Boy Scout uniform dishonored by the bank.

The bank had placed an arbitrary 2-week hold on the account, according to a story which appeared in the Boston Globe.

This kind of thing is unconscionable, and, frankly, it's something this committee and the Congress should not allow to continue. This sentiment is reflected in the fact that 150 Members of the House are cosponsoring this bill.

During these hearings, we will hear a lot about all the "voluntary" steps that the banks are taking and all the little kindly worded bulletins that have flowed from the Federal supervisory agencies. It's the kind of volunteerism that seems to pick up only when the Congress starts getting serious about ending this deposit shell game. I don't think we should leave the Lucy Codys of this world to the uncertainty of this on-again/off-again volunteerism.

Way back in 1977, the banking agencies were talking about the problem, and doing nothing effective. In May 1984, I introduced the Expedited Funds Availability Act, H.R. 5301, to deal with the problem after realizing that the agencies were doing little more than shuffling paper. The issue heated up, and sure enough, 3 months later the American Bankers Association issued a big announcement about a "voluntary" campaign to improve the situation. it's October 1985 and judging from the mail, telephone calls, and personal contacts with consumers, there's not much change.

Not much has happened but a stepped-up public relations campaign apparently designed to lull the Congress to sleep on the issue.

The ABA News Weekly for October 8, just yesterday, promotes a new public relations gimmick—a "Voluntary Action Kit." The ABA publication is right up front about what the kit is supposed to accomplish:

> A positive banker response to the kit will help diffuse congressional concern about consumer issues and will refocus legislator attention on other issues, such as enhancing the industry's ability to provide new service opportunities to customers.

The American consumer needs more than these public relations stunts and kits. It needs the kind of definitive action provided by H.R. 2443.

[The text of H.R. 2443 and a section-by-section analysis of the Expedited Funds Availability Act follow:]

99TH CONGRESS
1ST SESSION

H. R. 2443

To limit the number of days a depository institution may restrict the availability of funds which are deposited in any account.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 1985

Mr. ST GERMAIN (for himself, Mr. BARNARD, Mr. FAUNTROY, Mr. MITCHELL, Mr. GARCIA, Mr. ROEMER, Mr. NELSON of Florida, Mr. COOPER, Mr. MCKINNEY, Mr. ANNUNZIO, Mr. KLECZKA, Mr. LEHMAN of California, Mr. LUNDINE, Mr. FUSTER, Mr. MANTON, Ms. OAKAR, Ms. KAPTUR, Mr. GONZALEZ, Mr. VENTO, Mr. FRANK, Mr. CARPER, and Mrs. BOXER) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To limit the number of days a depository institution may restrict the availability of funds which are deposited in any account.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Expedited Funds Availability Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that—

(1) the writing and depositing of checks is an important element in the efficient operation of the American economy;

(2) many people rely on the rapid availability of funds deposited in their accounts for the basic necessities of life;

(3) notwithstanding the fact that depository institutions usually receive provisional credit for checks they receive within one to two days after such checks are deposited with them, many depository institutions have imposed inordinate delays on the availability of those funds to depositors;

(4) the incidence of returned checks, which depository institutions often use to justify their delayed funds availability policies, amount to approximately one percent of all checks written in the United States, and a substantial portion of these returned checks are paid on second presentment;

(5) with few exceptions, efforts by State governments, Federal agencies, and the financial industry have been unsuccessful in curbing the abuses which have been found in the area of delayed funds availability; and

(6) a coordinated Federal response is the most reasonable way to ensure that depositors throughout

the United States are treated fairly in gaining access to funds in their accounts.

(b) PURPOSE.—It is the purpose of this Act to—

(1) adopt temporary, maximum time limits for the availability of funds deposited by check;

(2) replace those temporary time limits with standard availability ceilings within 5 years after the date of the enactment of this Act, pursuant to regulations prescribed by the Board of Governors of the Federal Reserve System;

(3) require depository institutions to fully disclose their funds availability policies to depositors;

(4) permit States, and individual depository institutions, to adopt funds availability policies which allow depositors to gain access to funds earlier than prescribed by Federal law or regulation; and

(5) prescribe appropriate enforcement mechanisms to ensure compliance with the provisions of this Act.

SEC. 3. DEVELOPMENT OF EXPEDITED CHECK CLEARING SYSTEM.

(a) EXPEDITED CHECK CLEARING SYSTEM.—(1) The Board of Governors of the Federal Reserve System shall immediately begin to develop a system to provide that—

(A) funds deposited by checks drawn on a local depository institution shall be available for withdrawal at the start of the business day following the business day on which such checks were deposited; and

(B) for all other checks, not more than three business days shall intervene between the business day on which such checks are deposited and the business day on which the funds involved are available for withdrawal.

(2) Such system shall be implemented as soon as possible, but in no event later than 5 years after the date of the enactment of this Act.

(b) REGULATIONS.—In order to achieve the goals specified in subsection (a), the Board shall consider (among other proposals) requiring, by regulation, that—

(1) each depository institution place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations;

(2) within one business day after an originating depository institution is presented, through a payment system, a check for more than $250—

(A) such originating depository institution shall determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution shall directly notify the receiving depository institution of such determination;

(3) regardless of where a check is cleared initially, all returned checks are eligible to be returned through the Federal Reserve System;

(4) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution; and

(5) there be extensions of deadlines for the return of unpaid checks by any originating depository institution where such extensions would result in the earlier receipt of unpaid checks by the receiving depository institution.

(c) REPORTS.—(1) The Board shall transmit a report to both Houses of the Congress not later than 6 months after the date of the enactment of this Act and annually thereafter until the goals specified in subsection (a) are achieved.

(2) Each such report shall describe the actions taken by the Board to achieve the goals specified in subsection (a).

SEC. 4. EXPEDITED CHECK CLEARING.

(a) AVAILABILITY OF FUNDS.—In order to expedite the check clearing process, in any case in which funds are deposited by check in an account at a depository institution—

(1) except as provided in section 5, not more than one business day shall intervene between the business day on which such check is deposited and the business day on which such funds are available for withdrawal in the case of—

(A) a check for not more than $100;

(B) a check drawn on any branch of the receiving depository institution, if such branch is located in the same State in which the receiving depository institution is located;

(C) a check which is endorsed only by the person to whom it was issued and which is drawn on—

(i) the Treasury of the United States;

(ii) the account of any State; or

(iii) the account of any county, city, town, village, or municipality located in the United States; and

(D) beginning 2 years after the date of the enactment of this Act, any cashier's check or certified check;

(2) except as provided in paragraph (1) of this subsection and section 5 of this Act, not more than three business days shall intervene between the business day on which such check is deposited and the

business day on which such funds are available for withdrawal in the case of a check drawn on a local depository institution;

(3) except as provided in paragraph (1) of this subsection and section 5 of this Act, not more than four business days shall intervene between the business day on which such check is deposited and the business day on which such funds are available for withdrawal in the case of a check drawn on an in-State depository institution; and

(4) except as provided in paragraph (1) of this subsection and section 5 of this Act, not more than eight business days shall intervene between the business day on which such check is deposited and the business day on which such funds are available for withdrawal in the case of a check drawn on an out-of-State depository institution.

(b) AFTER-HOURS DEPOSITS.—For purposes of this Act, a check deposited on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been deposited on the next business day.

(c) TIME PERIOD ADJUSTMENTS.—Notwithstanding any other provision of law, the Board may, by regulation—

(1) shorten any time period established under subsection (a);

(2) extend by one business day any time period established under subsection (a), or shortened under paragraph (1), with respect to any deposit made at a shared or nonproprietary automatic teller machine; and

(3) extend by one business day any time period established under subsection (a), or shortened under paragraph (1), with respect to any deposit made at any depository institution described in clauses (ii) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(d) AVAILABILITY OF CASH DEPOSITS.—The Board shall provide, by regulation, that in any case in which any cash is deposited in an account at a depository institution, such cash shall be available for withdrawal on the business day on which it is deposited.

SEC. 5. EXCEPTIONS.

(a) DEPOSITS IN EXCESS OF $5,000.—(1) Section 4 shall not apply with respect to deposits of checks aggregating more than $5,000 in any account on any business day.

(2) Beginning 2 years after the date of the enactment of this Act, no cashier's check or certified check shall count toward the $5,000 limit specified in paragraph (1).

(b) NEW ACCOUNTS.—With respect to any new depositor at a depository institution, subsections (a) and (c) of section 4 shall not apply to any deposit made by such new depositor during the first 30 calendar days after the account involved is opened, except that, beginning 2 years after the date of the enactment of this Act, such subsections shall apply with respect to cashier's checks and certified checks deposited during such 30-calendar day period.

(c) REPEATED OVERDRAFTS.—In any case in which, on three separate and distinct occasions within any 6-month period, any account (or successor account as defined by the Board, by regulation) of a depositor has been the subject of checks which were written by such depositor and which were in excess of the available funds in the account involved, section 4 shall not apply to any such account for a period of 6 months following the last occasion involved.

(d) FOREIGN CHECKS.—Section 4 shall not apply in any case in which a check is drawn on a depository institution, or an office of a depository institution, located outside of the United States.

(e) EMERGENCY CONDITIONS.—Section 4 shall not apply to any depository institution with respect to any failure to comply with such section if the Board determines and certifies in writing that, despite the exercise of due diligence by the depository institution involved, such failure to comply was caused by emergencies beyond the control of such depository institution.

SEC. 6. EFFECT ON STATE LAW.

Nothing contained in this Act—

(1) limits the authority of any State to adopt laws which require that funds deposited by check in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this Act or in regulations prescribed by the Board under this Act;

(2) prevents a depository institution, in accordance with the policy of such depository institution, from making funds available for withdrawal in a shorter period of time than the period of time provided in this Act or in regulations prescribed by the Board under this Act; or

(3) affects a depository institution's right—

(A) to accept or reject a check for deposit; or

(B) if a check is accepted for deposit and the depository institution has made provisional settlement with the depositor, to, pursuant to law—

(i) revoke the provisional settlement given by the depository institution;

(ii) charge back the depositor's account; or

(iii) claim a refund of such provisional credit.

SEC. 7. PAYMENT OF INTEREST.

Notwithstanding any other provision of law, in any case in which funds are deposited in an interest-bearing account at a depository institution, interest shall accrue on such funds from the business day on which such deposit is made.

SEC. 8. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution involved shall provide a written disclosure to the potential customer of the general policy of such depository institution with respect to when a customer may withdraw funds deposited by check into the customer's account.

(b) NOTICE AT TIME OF DEPOSIT.—Each depository institution shall either—

(1) furnish its customers with preprinted deposit slips, or envelopes for automatic teller machine deposits, containing a summary statement of the general policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account; or

(2) in the case of a deposit into an account for which funds may not be immediately available for withdrawal, provide specific notice of the day on which the customer may withdraw such funds.

(c) MAILING OF NOTICE.—(1) In the first regularly scheduled mailing to customers occurring more than 30 days after the effective date of this section, each depository institution shall send a written summary containing the general policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account.

(2)(A) Each time a depository institution makes a significant change in the general policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, such depository institution shall send a written summary to its customers of such change.

(B) Such written summary shall be sent to such customers in the first regularly scheduled mailing to customers occurring after such change is made.

(d) POSTING OF NOTICE.—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by such depository institution, a notice which specifies the time periods applicable to the availability of funds deposited in a customer's account.

SEC. 9. MODEL DISCLOSURE FORMS.

(a) DEVELOPMENT.—The Board may publish model disclosure forms and clauses for common transactions—

(1) to facilitate compliance with the disclosure requirements of this Act; or

(2) to aid customers by utilizing readily understandable language.

(b) VOLUNTARY USE.—Nothing in this Act requires the use of any model disclosure form or clause published by the Board under subsection (a).

SEC. 10. REGULATIONS.

(a) REGULATIONS.—The Board shall prescribe regulations—

(1) to carry out the provisions of this Act;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) CONSULTATION.—In prescribing such regulations, the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

SEC. 11. PAYMENTS SYSTEM ADVISORY COUNCIL.

(a) ESTABLISHMENT.—(1) The Board shall establish a Payments System Advisory Council to advise and consult with it in the exercise of its functions under this Act.

(2) In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of depository institutions, consumers, commercial depositors, and the technology industries.

(b) GENERAL PROVISIONS.—(1) The Council shall meet from time to time at the call of the Board.

(2) Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of the Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time.

(3) Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

SEC. 12. ADMINISTRATIVE ENFORCEMENT.

(a) ADMINISTRATIVE ENFORCEMENT.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union or insured credit union.

(b) ADDITIONAL POWERS.—(1) For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act.

(2) In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(c) ENFORCEMENT BY THE BOARD.—Except to the extent that enforcement of the requirements imposed under this Act is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(d) PROCEDURAL RULES.—The authority of the Board to prescribe regulations under this Act does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this Act.

SEC. 13. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this Act or any regulation prescribed under this Act with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) CLASS ACTION AWARDS.—In determining the amount of award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) BONA FIDE ERRORS.—(1) A depository institution may not be held liable in any action brought under this section for a violation of this Act if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.

(d) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SEC. 14. DEFINITIONS.

For purposes of this Act—

(1) the term "account" means any account in a depository institution, including demand deposit accounts, negotiable order of withdrawal draft accounts,

savings deposit accounts, share accounts, and time deposit accounts;

(2) the term "Board" means the Board of Governors of the Federal Reserve System;

(3) the term "business day" means any day other than a Saturday, Sunday, or legal holiday;

(4) the term "cash" means United States coins and currency, including Federal Reserve notes;

(5) the term "cashier's check" means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution;

(6) the term "certified check" means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) the term "check" means any check, cashier's check, certified check, negotiable or transferable instrument, payment order of withdrawal, money order, or other similar item used for purposes of making payments or transfers to third parties or others;

(8) the term "Council" means the Payments System Advisory Council;

(9) the term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act;

(10) the term "emergencies" means failures of communications facilities, suspension of payments by another depository institution, and other similar emergency conditions and circumstances;

(11) the term "in-State depository institution" means any depository institution which, as determined by regulations prescribed by the Board, is not a local depository institution but which has an office in the same State in which the office of the receiving depository institution is located;

(12) the term "local depository institution" means a depository institution which, as determined by regulations prescribed by the Board, has an office in the same city, town, village, local region, or metropolitan

area in which the office of the receiving depository institution is located;

(13) the term "originating depository institution" means the depository institution on which a check is drawn;

(14) the term "out-of-State depository institution" means any depository institution which, as determined by regulations prescribed by the Board, does not have an office in the same State in which the office of the receiving depository institution is located;

(15) the term "receiving depository institution" means the depository institution in which a check is first deposited;

(16) the term "State" means the several States or the District of Columbia;

(17) the term "United States" means the several States and the District of Columbia.

SEC. 15. EFFECTIVE DATE.

(a) DATE OF ENACTMENT.—Sections 1, 2, 3, 9, 10, 11, 14, and 15 shall take effect on the date of the enactment of this Act.

(b) 90 DAYS AFTER DATE OF ENACTMENT.—Sections 4, 5, 6, 7, 8, and 12 shall take effect 90 days after the date of the enactment of this Act.

(c) 180 DAYS AFTER DATE OF ENACTMENT.—Section 13 shall take effect 180 days after the date of the enactment of this Act.

5/8/85

Section-by-Section-Analysis of

Expedited Funds Availability Act

Sec. 1: Prescribes the Act's short title.

Sec. 2: States the findings and purposes of the Act.

Sec. 3: Requires the Federal Reserve to develop a system in no longer than five years from the date of enactment that would cause all checks to be cleared so that funds would be available for withdrawal the next business day after the day of deposit for checks drawn on local institutions, and for all other checks, not more than three business days would intervene between the day of deposit and the day of availability of the funds for withdrawal. The Federal Reserve should consider, among other things, establishing a uniform endorsement standard, direct notification of nonpayment for checks over $250, and a system for expedited notice of nonpayment of a check to the receiving depository institution. The Federal Reserve would report within six months, and annually thereafter, on progress toward the goal.

Sec. 4: Establishes specific time limits for funds availability for types of deposits. These limits would be in effect while the system described in Section 3 is being developed. The limits are:

(1) Availability the same business day as the day of deposit for a cash deposit or the cash portion of a deposit.

(2) One business day between day of deposit and day of availability for checks of $100 or less; checks drawn on in-state branches of the receiving depository institution; and U.S. Treasury, State and local government checks endorsed only by the person to whom the check is issued. Such one day availability will be accorded all cashier's and certified checks beginning 2 years after enactment but, in the meantime, they will be treated as ordinary checks;

(3) Not more than three business days between day of deposit and day of availability for checks drawn on local depository institutions (i.e., institutions determined by the Federal Reserve to have an office in the same city, town or village, or in the same local region or metropolitan area, as the receiving depository institution);

(4) Not more than four business days between day of deposit and day of availability for checks drawn on non-local depository institutions with an office in the same state as the receiving depository institution; and

(5) Not more than eight business days between day of deposit and day of availability for checks drawn on depository institutions which only have offices outside the state of the receiving depository institution.

Deposits made on Saturdays, Sundays, holidays or after business hours are deemed made on the next business day. The Federal Reserve is given regulatory authority to shorten the time periods specified above, and also the authority to lengthen the time periods specified in (2) through (5) above by one day to accommodate the unique circumstances of nonproprietary ATMs, and also by one day to accommodate savings and loan associations, mutual savings banks, and credit unions.

__Sec. 5:__ Provides exceptions to the maximum limits in Section 4.

(1) Availability limits would be waived for a customer who deposits more than $5000 in an account in a single day (not including any portion of a deposit or deposits consisting of cash, and two years after enactment, not including portions consisting of cash, cashier's checks, or certified checks).

(2) The availability limits shall not apply to new customers' deposits that are made within 30 calendar days after the date on which an account is opened, except for any portion of a deposit or deposits consising of cash, and two years after enactment, not including portions consisting of cash, cashier's checks or certified checks.

(3) If a customer issues checks from an account that are returned for insufficient funds three or more separate times in a six month period, then the availability limits would be waived but only for the specific account affected or a successor account.

(4) The availability limits would not apply to checks drawn on depository institutions outside the United States.

(5) In the event of emergencies beyond the control of depository institutions, that are certified by the Federal Reserve, such as in the failure of communications facilities or the suspension of payments by another institution, the availability limits would be waived.

__Sec. 6:__ Preserves the authority of states to enact laws affecting the state chartered institutions within their state, and the authority of individual depository institutions to prescribe policies making funds available more quickly than the time periods prescribed in this Act or in Federal Reserve regulations.

__Sec. 7:__ Requires that interest begin to accrue on the business day on which a deposit is made into an interest-bearing account.

__Sec. 8:__ Requires depository institutions to disclose their funds availability policies in writing to new customers; on deposit slips or by specific notice when deposits are made; in mailings to established customers; and by posting of notices in locations where deposits are taken.

__Sec. 9:__ Authorizes the Federal Reserve to publish optional model disclosure forms and clauses.

__Sec. 10:__ Specifies agency responsibilities by permitting the Federal Reserve to prescribe regulations to carry out the Act after consultation with the other federal depository institution regulatory agencies.

Sec. 11: Establishes a Payments System Advisory Council under the auspices of the Federal Reserve Board to provide consumer and private sector advice to the Federal Reserve on funds availability matters.

__Sec. 12:__ Establishes administrative enforcement arrangements under existing law, to be carried out by the federal regulators of depository institutions.

__Sec. 13:__ Provides civil liability penalties for individual and class actions for violations of the Act, commencing 6 months after the date of enactment.

__Sec. 14:__ Prescribes definitions applicable to the Act.

__Sec. 15:__ Establishes effective dates for the Act. The Federal Reserve is to begin working toward its five year goals starting on the date of enactment. The interim maximum time limits prescribed in the Act, the disclosure requirements, and the administrative enforcement provisions take effect 90 days after enactment.

Chairman St Germain. At this time, the Chair recognizes Mr. Wylie.

Mr. Wylie. Thank you very much, Mr. Chairman.

I want to join you in welcoming our distinguished witnesses from the financial community. I also want to commend you for continuing these hearings on delayed funds availability.

This issue certainly does deserve the attention of this subcommittee. We addressed the issue in the last Congress when we heard from regulators in April 1984. They had just issued a joint policy statement urging financial institutions to refrain from imposing unnecessary delays in making funds available to their depositors.

I understand a survey was undertaken this spring to measure the effectiveness of their policy statement, which I believe the Federal Reserve will report on tomorrow when they come up with their witness.

In addition, I understand the industry itself has, as I am sure we will hear from the American Bankers Association—they are seeking and implementing efforts to solve the delayed funds availability issue, as you mentioned.

I applaud the efforts of the regulators and the industry. I believe they are on the right track. But I am reminded of something the late Will Rogers once said: "You may be on the right track, but if you sit there long enough you are sure to get run over."

The point is that it has been an incredibly long ride on this train of self-enforcement. While institutions can find a way to automatically debit an account by a debit card in a retail environment, why can't a way be found to return an item for insufficient funds in an automated manner? This, as I have been told, is the crux of the matter; that institutions place a hold on depositors' funds in order to assure that deposited checks are not returned.

I would like to note that at least four other members of this committee have introduced legislation, as you mentioned, Mr. Chairman, in response to the problem of the delayed funds availability. My bill, H.R. 15 that takes a more general approach than most. Institutions are directed to disclose their hold policies and the Federal Reserve is directed to speed up the system with the target of providing 1-day availability on locally drawn checks and 3-day availability for all other checks.

We may take a different approach on the matter, but the goal is the same—to speed up availability of depositor's funds to the depositor.

Mr. Chairman, I look forward to hearing from this panel of distinguished witnesses representing their various trade associations, and I hope they can shed some additional light on this issue.

Thank you very much.

Chairman St Germain. Mr. Annunzio.

Mr. Annunzio. Thank you, Mr. Chairman.

I want to commend you once again, Mr. Chairman, for holding these hearings. I hope that at the conclusion of the hearings we can move to vote on the legislation, since I believe it is one of the most important issues facing consumers today.

As chairman of the Consumer Affairs and Coinage Subcommittee, I can tell you and the other Members of the committee that the question of check holds has generated as much mail as any current consumer topic. I have even been told, by long-time lobbyists who have not been overly pro-consumer, that this is one piece of legislation that they want to see enacted.

Where check holds are applied without regard to a person's income or occupation, it seems that not even Washington's toughest lobbyists could justify the check hold policies of the financial community.

While financial institutions certainly have the right to protect themselves against insufficient fund check transactions, there can be no justification for extended holds which are placed on checks long after the necessary clearing period. In fact, the more check collecting procedures are speeded up through the use of space-age techniques such as automated clearinghouses, the longer check holds have become.

Mr. Chairman, a number of hearings in both the House and in the other body have been held on the issue. I feel it is now time to move, and I am certainly hoping that we will not put a hold on check hold legislation.

Chairman ST GERMAIN. Mr. LaFalce.

Mr. LAFALCE. Thank you very much.

First, I really want to commend you for your many efforts and that of your staff in addressing the problems faced by consumers in gaining access to the funds they deposit in banks and thrifts. As a result of your committee's investigations, the problem of check holds is one that is now well-documented.

I dare say there is not a member of this committee who doubts the need for policies to shorten and standardize the rules for funds availability. We have seen studies and surveys describing overly long hold periods, and we hear anecdotal evidence of unconscionable abuses of holding period rules.

For example, I heard from a constituent who could not get a Government check cashed at a bank where he had an account; another received a large check close to $50,000 from the settlement of an estate. The check, drawn on a trustee account in one bank, was subject to a 2-week hold period when my correspondent deposited it in a bank across the street.

The saddest part of this story was the recipient of the inherited windfall was not one to consider $50,000 a drop in the bucket. The almost unbelievable truth was the beneficiary had literally been living in the streets and had little more than the clothes he wore and a few dollars in his pocket when the trustees of the estate found him.

Yet another absurd case, a Philadelphia woman wrote me to tell me that when her purse was stolen, she closed her checking account, only to find when she opened another at the same bank a hold of 10 days was placed on the $1,900 of so called available funds transferred from the closed account. The woman suffered double-jeopardy while the bank got to play the float twice on the same dollars.

These stories represent particularly egregious examples of problems faced by consumers. They are not the norm; nevertheless, as most of us can attest to personally, virtually every bank consumer suffers at some time or another inconvenience or expense at the hands of bank float managers.

For that reason, I believe the committee should mark up, and mark up soon, and send to the House legislation to impose a better standard of responsibility on banks than they seem able to impose upon themselves. Thus, very early this year I introduced my bill, H.R. 687, requiring the Federal Reserve to promulgate regulations on reasonable check hold periods. In addition, Mr. Chairman, I have cosponsored your legislation.

During the course of these hearings, I look forward to discussing with our witnesses the technical aspects of solving the funds availability problem and hope we can discuss the merits of different approaches to solving it.

Of particular interest to me is the effect any legislation might have on our own New York State regulations, which appear to be working fairly well. Though recent in origin, they are working fairly well since they have been initiated.

Further, I think it important to assure we preserve regulatory flexibility in dealing with funds availability, particularly as the clearing system is so intimately tied to the Federal Reserve.

Finally, though I do not have in my own mind a firm position on this matter, I think it would be worthwhile in the context of these hearings to at least discuss whether we should deal with the fact that transactions of accounts now exist outside of banks. In other words, should persons who deposit funds in brokerage-type accounts be protected by the same rules and disclosure we impose on banks?

Mr. Chairman, these hearings are timely and should be followed immediately by committee markup and floor consideration by the House.

I again commend you for your leadership and look forward to hearing from our witnesses.

Chairman St Germain. Thank you, Mr. LaFalce.

Mr. Shumway.

Mr. Shumway. Thank you, Mr. Chairman.

Along with other Members, I would like to join in commending you for calling these hearings on an issue which affects both the providers and the receivers of financial services in America. I indeed share the committee's concern, and your concern, Mr. Chairman, that the issue of delayed funds availability must be addressed. To that end, I am confident that any legislative measure that we develop here must and will meet the dual goals of ensuring that customers receive their funds in a reasonable amount of time, and protecting our depository institutions from unreasonable risk or fraud.

I am particularly pleased to note that among the panel of witnesses before the subcommittee this morning—and I would like to introduce him to the subcommittee—is Mr. Greg Wilhelm, who is a vice president of Wells Fargo Bank. He is here representing the Consumer Bankers Association in this hearing.

Greg, I know, has earned the title—although I am sure he would deny it—in California, anyway, of "Mr. Delayed Funds Availability." He is the foremost expert on the subject in the State of California, and certainly his voice has been heard often in many States in the Nation, and is one that deserves to be heard and considered very thoughtfully before the subcommittee this morning.

Greg has played a major role in crafting the California delayed funds statute which, I might add, has served as a model for other State statutes as well as various proposed Federal legislation. He has also been a very valuable information resource to committee Members and staff on both sides of the aisle.

I am sure that Greg's testimony today will be enlightening to the subcommittee, as well as the testimony to be presented by other members of this distinguished panel. And I look forward to hearing that testimony and considering this subject.

Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Dreier.

Mr. **Dreier**. Thank you, Mr. Chairman.

I, too, would like to commend you on calling these hearings. We, of course, want to protect the Lucy Codys of the world from being impacted by these sorts of problems. And it was in part at the recommendation of our "Mr. Delayed Funds Availability" that I joined as a cosponsor of your legislation. And, if you will recall, last year you and I had a little confrontation on the issue, and I am now, due to your great personality, a co-sponsor of your legislation. As I said, and very proud to be onboard.

I can't help but believe that there has got to be an opportunity for improvement in a system where checks, sometimes even Government checks, as Mr. LaFalce mentioned, are held for as long as 3 weeks before funds are credited to a customer's account.

I also believe that there is a role that Federal legislation can play, because unless every State plays by the same rules, I don't think we will ever see any improvement in the problem.

Your bill is a good starting point for providing a reasonable timeframe for banks to be certain of being granted credit on deposited funds without placing long, unnecessary holds on consumer accounts. I believe the guidelines set forth in this bill are good, possibly too restrictive in some points, but I know it is a very good starting point for us in this committee. And I think we are going to pursue some changes in the system to provide more timely availability of deposited funds, and it may prove beneficial for this committee to closely examine the system that was recently put in place in California.

I, too, would like to welcome our friend, Mr. Wilhelm, and look forward to the expertise of California's "Mr. Delayed Funds Availability."

Thank you very much, Mr. Chairman.

[The opening statement of Hon. David Dreier follows:]

REMARKS OF THE HON. DAVID DREIER
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
OCTOBER 9, 1985

THANK YOU, MR. CHAIRMAN. I WOULD FIRST LIKE TO TAKE THE OPPORTUNITY TO COMMEND YOU FOR YOUR LEADERSHIP IN CALLING FOR THESE HEARINGS TODAY AND TOMORROW ON THE ISSUE OF DELAYED FUNDS. AS WE MOVE AHEAD INTO AN ERA WHERE THE FINANCIAL MARKETS ARE HIGHLY COMPETITIVE AND COMPLEX, IT'S IMPORTANT THAT WE CONTINUE TO HAVE THE CONSUMERS' INTERESTS IN MIND.

AS A TRIBUTE, MR. CHAIRMAN, TO YOUR OVERWHELMING AND CONVINCING PERSONALITY, I WOULD LIKE TO REMIND YOU OF THE POSITION I TOOK DURING LAST YEAR'S HEARINGS ON DELAYED FUNDS AVAILABILITY. AS YOU WILL RECALL, I WAS, AT THAT TIME, OPPOSED TO ANY STATUTORY RESTRICTIONS ON A FINANCIAL INSTITUTION'S ABILITY TO PLACE HOLDS ON DEPOSITED CHECKS. HOWEVER, NOW, AFTER CAREFULLY STUDYING THIS ISSUE AND MEETING WITH VARIOUS BANKERS, I HAVE COME TO BELIEVE THAT REASONABLE GUIDELINES CAN BE IMPLEMENTED IN AN EFFORT TO ELIMINATE ABUSE, OR THE PERCEPTION OF ABUSE, IN OUR CHECK PROCESSING SYSTEM.

I CAN'T HELP BUT TO BELIEVE THERE CAN BE IMPROVEMENT IN A SYSTEM WHERE CHECKS, SOMETIMES EVEN GOVERNMENT CHECKS, ARE HELD FOR AS LONG AS THREE WEEKS BEFORE FUNDS ARE CREDITED TO A CUSTOMER'S ACCOUNT. I ALSO BELIEVE THERE IS A ROLE THAT FEDERAL LEGISLATION CAN PLAY BECAUSE, UNLESS EVERY STATE PLAYS BY THE SAME RULES, I DON'T THINK WE WILL EVER SEE ANY IMPROVEMENT.

H.R. 2443, THE EXPEDITED FUNDS AVAILABILITY ACT, OF WHICH I AM A COSPONSOR, IS A GOOD STARTING POINT FOR PROVIDING A REASONABLE TIME FRAME FOR BANKS TO BE CERTAIN OF BEING GRANTED CREDIT ON DEPOSITED FUNDS WITHOUT PLACING LONG, UNNECESSARY HOLDS ON CUSTOMER ACCOUNTS. HOWEVER, I BELIEVE THE GUIDELINES SET FORTH IN THIS BILL ARE, IN SOME CASES, TOO RESTRICTIVE AND WILL BE IN NEED OF IMPROVEMENT. BUT I AM HAPPY THAT AN EFFORT IS BEING MADE TO IMPROVE THE SYSTEM.

AFTER SAYING THAT, MR. CHAIRMAN, I THINK IF WE ARE GOING TO PURSUE CHANGES IN THE SYSTEM TO PROVIDE MORE TIMELY AVAILABILITY OF DEPOSITED FUNDS, IT MAY PROVE BENEFICIAL FOR THIS COMMITTEE TO CLOSELY EXAMINE THE SYSTEM THAT WAS RECENTLY PUT IN PLACE IN CALIFORNIA. GREG WILHELM OF WELLS FARGO BANK WILL BE TESTIFYING SHORTLY ON THIS. HE WILL BE ABLE TO PROVIDE THE COMMITTEE WITH A MORE DETAILED REVIEW OF WHAT CALIFORNIA HAS DONE SO FAR, AND THE SUCCESS THEY HAVE ACHIEVED IN REDUCING ABUSIVE CHECK HOLDING PRACTICES IN THAT STATE.

BUT BEYOND THAT, I JUST WANT TO EMPHASIZE ONE POINT THAT I THINK IS IMPORTANT TO THE OVERALL CONTEXT OF THIS ISSUE. THAT IS THAT BANKS ALONE ARE NOT RESPONSIBLE FOR ALL OF THE PROBLEMS OF EXPEDITING FUNDS. THERE'S ROOM FOR IMPROVEMENT AT ALL LEVELS OF OUR FINANCIAL SYSTEM. AND IF THE COMMITTEE KEEPS THIS IN MIND, I BELIEVE WE CAN MAKE SOME SIGNIFICANT CHANGES WHICH WILL BENEFIT BOTH THE BANKING INDUSTRY AND THEIR CUSTOMERS.

Chairman **St Germain**. Thank you, Mr. Dreier.

Are there any other Members who wish to be recognized at this point?

Mr. Cooper.

Mr. **Cooper**. I would just like to join in praising you, Mr. Chairman, for holding these hearings, and to introduce Ken Glass from the First Tennessee Bank of Tennessee.

We have no experts on the delayed funds in Tennessee; just experts on funds availability. So I am sure Mr. Glass will enlighten us on that subject today.

Thank you.

Chairman **St Germain**. Thank you, Mr. Cooper.

If there is no one else who wants recognition——

Mr. **Parris**. Mr. Chairman?

Chairman **St Germain**. Whoops.

The congenial gentleman from Virginia.

Mr. **Parris**. I would like to be tardy to this financial love-in we are having this morning. Good to be here.

Chairman **St Germain**. We are always happy to have you with us.

Our first witness will be J. Kenneth Glass, who is the executive vice president of the First Tennessee Bank, appearing on behalf of the American Bankers Association.

I would say to Mr. Glass, and Messrs. Tomson, Wilhelm, Gannon, Williams, and Ryan, that we will put your entire statements in the record. If you would like to summarize, you are certainly entitled to. But, without objection, all your statements will be placed in the record in their entirety.

Mr. Glass.

STATEMENT OF J. KENNETH GLASS, EXECUTIVE VICE PRESIDENT, FIRST TENNESSEE BANK, MEMPHIS, TN, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Mr. **Glass**. Thank you, Mr. Chairman.

I will be summarizing my comments, as you suggested.

We are very sympathetic to the problems that have led to the solutions proposed by H.R. 2443, and other legislation like it now pending in Congress. We are, however, concerned that the solutions proposed are not appropriate to the problem and may impose risks on the banking industry.

Any effort to address this issue must be undertaken keeping in mind the actual magnitude of the problem and the risk of any such proposal. The check system is a system built on honesty, because 99 percent of the checks processed in this country are good checks, it works quite well. However, safeguards need to be available to assure it continues to work effectively.

Banks use holds as a safeguard when they fear there may be a risk that the item deposited could be dishonored and returned unpaid. In such cases, it would be unwise for the bank to allow immediate withdrawal of the funds. Although specific instances, as has been cited here, of apparent abuse and funds availability practices can be cited, by and large, commercial banks are reasonable and prudent in the use of check holds practices, and in the vast majority of cases funds are available to depositors without the imposition of a hold. This is confirmed by two separate surveys, one conducted by the California Banking Commission's Office, and the other by the Houston Clearinghouse Association. These surveys discovered that less than one-tenth of 1 percent of deposited items were subject to a hold.

Over the past several years, Mr. Chairman, our association has undertaken a concerted effort, as you alluded to before, to encourage disclosure of bank availability practice to make sure our customers are aware of not only the hold policies and practices at our individual institutions, but also of alternatives to avoid the inconvenience a hold on a critical deposit may produce.

Recent surveys of our membership indicate that about 70 percent of our members provide notice to their hold policy when the account is opened. Sixty percent provide notice by the teller when a hold is placed. Other methods of notification in widespread use include lobby notices and the use of statement stuffers.

Platform officers are generally empowered and frequently do override a hold based on the specific needs of a customer. They are also equipped to advise on alternatives to the use of a check which do not present a delayed availability problem.

Many payments, especially those that recur regularly such as salary, dividends, and Social Security, can be received through automated clearinghouses, and others can be handled as wire transfers. Both of these electronic means of payment are secure against loss or theft and entail immediate and usually irrevokable credit to the receiver's account.

While it is true that only 1 percent of the checks are returned, that amounts to over 1 million checks per day, and the dollar amount of these return items are far from insignificant. Further, we have no way of knowing what the volume of worthless checks would be if the industry did not take the precaution of selective use of check holds to avoid losses.

For these reasons, we are strenuously opposed to the establishment of a nationwide availability schedule, and we are steadfastly opposed to having it established in the inflexible framework of a legislative enactment. The statutory inflexibility of a uniform commercial code is one of the major impediments to expediting return item processing. Any statutory solution enacted today may likewise become an impediment in the evolution of the payment system toward electronics, whereas regulation has in the past proven more flexible and responsive to the evolution of the payment system. If such a schedule were to be established, the only prudent way to do so would be to have the Federal Reserve study the issue and provide, by regulation, safeguards to avoid any threat to the safety and soundness of the system.

Chairman ST GERMAIN. Mr. Glass, you know, it is very exciting; that is, having the Federal Reserve study the issue.

I'll have to use my glasses because this is fine print. There was a consumer survey question on delayed funds availability issued by the University of Michigan Survey Research Center in 1977—that is 8 years ago, ladies and gentlemen. They conducted a study on consumer credit use and attitudes toward regulations affecting credit on behalf of the Federal Reserve Board, the FDIC, and the

Comptroller of the Currency. This study was also directed toward check holds or delayed funds availability.

To say we want the Federal Reserve to study it—I am going to have a little fun with them tomorrow morning—you know, 8 years? Lord Almighty. So, I am not too impressed by somebody saying the Fed ought to study it.

Sorry to interrupt. You may proceed.

Mr. Glass. I would address that very shortly, I believe.

It would also be imperative that the Federal Reserve, as part of their deliberations, be required to consult with representatives of the effected financial services industry.

Despite the relative flexibility of the regulatory approach, we continue to believe that governmental intervention in this area is unnecessary for the reasons already mentioned and because of the diligent efforts of the industry to provide a solution.

We believe a major improvement in return item processing is on the horizon through the joint efforts of the Federal Reserve Board and the industry. A major new pilot program involving 100 financial institutions in four different Federal Reserve districts will begin a 90-day test on November 1.

This new pilot, simply put, will use the existing check processing technology to return dishonored checks to the institution where they were first deposited, eliminating the majority of the manual processing time.

In summary, Mr. Chairman, we recognize and appreciate the concerns of the committee with this issue of delayed access to deposits. As I have discussed, there is a reasonable and legitimate business need for the use of check holds on a selective basis.

The goals set forth in your bill are laudable. Some of those goals may not be attainable as long as we continue to use a system which requires the movement of paper documents to accomplish funds transfers.

Other aspects of the proposal, specifically to reduce the time periods that certain deposits are held, may be attainable through programs which are already under development.

If this committee will lend its support to the continued development of these programs, the achievement of these goals may be achieved in an expedient manner.

Thank you, Mr. Chairman, for allowing me to present the views of the American Bankers Association, and I would be glad to answer any questions that the committee may have.

[The prepared statement of Mr. Glass on behalf of the American Bankers Association and attachments follow:]

STATEMENT OF
THE AMERICAN BANKERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
ON
H.R.2443
"EXPEDITED FUNDS AVAILABILITY ACT"

OCTOBER 9, 1985

Chairman St Germain and members of the Subcommittee, my name is J. Kenneth Glass and I am Executive Vice President of First Tennessee Bank in Memphis, Tennessee. I am testifying here today on behalf of the American Bankers Association. I am here to discuss the Association's position on H.R.2443, the Expedited Funds Availability Act.

Mr. Chairman, let me state at the outset, we are very sympathetic to the problems that have led to the solutions proposed by h.R.2443, and other legislation like it now pending in the Congress. We are, however, concerned that the solutions proposed are not appropriate to the problem and may impose risks on the banking industry by requiring in too many cases that we assume the good faith of depositors and/or check writers often unfamiliar to us.

We operate in a highly competitive marketplace comprised of some 15,000 commercial banks, 3,500 savings and loan associations, 18,000 credit unions, 400 savings banks, and an ever increasing array of other participants in the financial services marketplace, all competing for the consumer's business. Customer service and confidence in our institutions are key ingredients for success in a business built upon mutual trust.

Abuse of customers and erosion of confidence and trust are disastrous to our ability to compete in the marketplace. Although specific instances of apparent abuse of funds availability practices can be cited, by and large, commercial banks are reasonable and prudent in the use of check hold practices, and in the vast majority of cases, funds are available to depositors without the imposition of a hold. Some more recent non-bank entrants into the transaction account business may not yet possess the experience and expertise to implement reasonable hold practices. However, consumers are aware of what reasonable policies are, and will take action when confronted with intransigent practices by these institutions.

Over the past several years, Mr. Chairman, our Association has undertaken a concerted effort to make sure our customers are aware not only of the hold policies and practices at our individual institutions, but also of alternatives to avoid the inconvenience a hold on a critical deposit may produce. Over three years ago, we developed model disclosure forms and policy statements for our members to use. The disclosure statement alerts our customers to the situations where a hold may be placed, and encourages customers to talk to a bank officer with any questions regarding the policy. We have attached a copy of these documents to our testimony.

Platform officers generally are empowered and frequently do override a hold based on the special needs of a customer. They also are equipped to advise on alternatives such as wire transfer and direct deposit, which do not present a delayed availability problem.

Annually, for the past three years, we have mailed this disclosure statement to our members with a cover letter from the President of our Association, urging use of the model to inform customers of bank hold practices.

Recent surveys of our membership indicate that about 70% of our members provide notice of their hold policy when the account is opened. Sixty percent provide notice by the teller when a hold is placed. Other methods of notification in widespread use include lobby notices and the use of statement stuffers. Given the reality of the financial services marketplace today, we cannot afford to irritate or confuse our customers. The market dictates that we be aware of their concerns, inform them of policies that affect them, and be flexible enough to accommodate their needs. If we are not, they will walk across the street to our competition.

Mr. Chairman, we understand your concern and desire to try and minimize the impact of check hold policies on consumers.

However, any effort to address this issue must be undertaken keeping in mind the actual magnitude of the problem, the risks of any such proposal, and the legitimate interest of the banking industry itself in developing and implementing solutions which maintain the safety and soundness of the payments system and the trust and confidence of our customers.

Background: Why Don't Banks Treat Checks As Cash?

The issue of availability is one with which the banking industry is well familiar. It is a problem which is inherent in a system which relies on the physical movement of paper to order funds transferred from an account at one institution to an account at another institution. A check is not cash. It is an order to a bank to pay cash to the person who is the payee of the check. Until that piece of paper arrives at the bank on which it is drawn, no one is sure whether it will be honored as valid or returned unpaid for any of a variety of reasons. Given the volume of checks processed on a daily basis in this country (over 100 million), there is no positive notice that a check has been paid. The only notice the bank of first deposit has that a check is bad is when it is returned unpaid. It is this uncertainty which leads banks to place selective holds on deposited funds.

If all people were honest or did not make mistakes as to the balance in their accounts, there would be no delayed availability problem. Similarly, there would be very little problem if everybody took the checks they wanted cashed directly to the institutions on which they were drawn, where the decision on the validity of the check and available funds could be made very quickly. This, of course, is not possible given the convenience and universality of a national payments system with many thousands of financial institutions participating.

Intuitively, it does seem rather incongruous that in a day and age where live television from outer space is common, and complex mathematical calculations can be done ~~in fractions~~ of a second on a computer the size of a credit card, it can take up to several days to assure the validity of a check drawn on a bank in the next state. Unfortunately, however, comparing space-age technology to the mechanics of the check clearing system is the classic apples and oranges comparison.

There are, of course, ways to transfer funds very quickly. The development over the past several years of electronic banking and the automated clearing house for the rapid clearing of electronic payments has given banking a broad new ability to effect very rapid and positive transfers of funds. Statistics of the National Automated Clearing House Association show that from 1976 through 1981 the volume of payments made and recorded through electronic means increased by over 100% each year. Currently, over 350 million transactions are completed annually through automated clearing houses. In addition, approximately three billion transactions are completed at automatic teller machines.

The key advantage to electronic banking is that it is so fast and is not subject to the delayed availability problem. For instance, if an employee takes his paper paycheck to the bank and deposits it, the bank may place a hold on it depending on who the employer is, who the employee/customer is, and their relationship to the bank. This is because the paper check must be sent back to the employer's bank to be sure that it is good. (This example assumes the employee and employer have different banks). On the other hand, if the paycheck is directly deposited by the employer via an electronic funds transfer to the bank account of the employee, those funds will be ready and waiting for withdrawal on that payday. In the first instance the employee has presented to the bank an order to the employer's bank (a check) which the employee's bank must then go out and collect. In the case of direct deposit, however, the employer's bank has electronically transmitted the funds directly to the employee's bank.

Direct deposit is also available for social security checks and many other recurring governmental payments. These programs prevent any potential problems with receiving or negotiating checks, and assure that available funds will be in the account on the day they are due. The American Bankers Association is a staunch advocate of the direct deposit system.

Electronic funds transfers are also available to ameliorate potential problems in other situations where availability of a check may pose a problem. For instance, in the situation where a child away from home is in need of a cash infusion, funds can be sent electronically via the automated clearing house system rather than by check, to provide immediately available funds. We have attached to our testimony, an article describing a program established by one of our member banks, specifically for this purpose.

Over the years, the consumer has typically used the check as a means to obtain cash or as a medium of payment for goods and services. Anyone who has attempted to negotiate a personal check for goods or services is aware of the identification procedures that most merchants require to accept a check. These procedures exist because significant numbers of checks are returned unpaid.

The banking industry, recognizing some of the inherent limitations of the paper-based check system has, with the advent of electronic technology, moved toward alternatives which will offer convenience never attainable with a check.

There are currently over 40,000 automatic teller machines in operation in this country, a number which increases virtually every day. In the past few years, numerous regional and national systems have developed which electronically link these machines. These shared systems allow the consumer to use his own bank ATM card to get cash from any of a number of machines owned by various financial institutions throughout the region, state, or nation. Media campaigns promoting these systems and banks who are members have become commonplace. Instant access to cash via an ATM has already become an everyday occurrence within a town or state. These systems will expand that availability and convenience geographically. It is already possible to make a coast to coast cash withdrawal which takes only a matter of seconds to process. These systems allow ready access to cash to avoid the hassle attendant to presenting a check for payment.

Similarly, there has been a move to point-of-sale terminals in retail establishments. These terminals use the customers ATM card to instantly transfer the amount of the purchase from the customer's bank account to that of the merchant without any cash ever changing hands. In each of these cases, the validity of the card, user, and the account balance can be verified electronically and the transfer effected immediately, thus eliminating the delay and uncertainty of a check.

The object of this discourse is to try and differentiate two separate and distinct payment systems which exist today. One is paper-based (check) and the technology upon which it is based (i.e., the transfer of paper among a series of individuals) can be traced back hundreds of years. The other, electronic funds transfers or electronic banking is about 15-20 years old and like any teenager can do many things its grandfather cannot. We are not attempting to in any way denigrate the paper-based system. Checks have advantages over electronics. It is a technology you carry in your shirt pocket. It does not depend upon a computer for authorization and can be negotiated at a vast universe of mercantile locations. It is used by millions of people every day. It is a system we would be hard pressed to replace in a wholesale manner in the forseeable future.

We include this section in our remarks simply to attempt to dispel any confusion as to the relationships that were thought to exist between the electronic and paper-based method of payment. We also include it to hopefully illustrate that this issue of holds on checks is endemic to a paper-based payment system.

Having contrasted the conceptual differences between the two systems, perhaps a short example of the steps involved in processing a check would be helpful.

Let's take the example of a check drawn on an account at Riggs National Bank, which is located in the District of Columbia, deposited to an account at United Virginia Bank in Northern Virginia on Monday. During the day Monday, the check will be transported from the branch where it was deposited to the United Virginia operations center in Alexandria. During the night, all of the checks received that day by United Virginia Bank will be sorted by some very sophisticated machinery, and all of the checks drawn on Riggs will be put in one pile. Tuesday morning, the Northern Virginia Clearing House will meet to exchange checks.

The Northern Virginia Clearing House is simply a room near Tysons Corner where many of the banks in the Northern Virginia and Washington, D.C. metropolitan area meet each morning to exchange checks drawn on each other. Riggs will bring checks it received as deposits drawn on United Virginia and other Northern Virginia banks and exchange them for checks drawn on Riggs that the Northern Virginia banks received.

Riggs will take the checks back to the District to be processed and posted to the Riggs account Tuesday night. Let's assume, however, that the check we said was deposited Monday at United Virginia turns out to be drawn on an account with insufficient funds to cover the amount of the check.

When the Riggs computer tries to post that account Tuesday night, it will discover that there are insufficient funds in the account and note that fact on an overdraft list. When the bank reopens Wednesday morning, the overdraft list will be distributed to the branch managers. Each branch manager will have an opportunity to review the overdrafts noted the night before that pertain to an account at their branch.

The branch manager generally has the discretion to decide whether to pay the overdraft and charge the account or return the check. These decisions are usually completed by late morning or early afternoon. The checks that have to be returned will be assembled by the return item department, and will be returned Thursday morning when the clearing house next meets. The check we started tracing Monday morning, will get back to United Virginia Thursday morning.

Thus, even on a local check under the best conditions, United Virginia would not know that the check is bad or good for at least three full days. It is also clear from this example that the return time (the time between when the check was dishonored and its receipt by United Virginia) is the most lengthy aspect of the process. If we expand the hypothetical to a regional or cross country example, the return time gets even longer, due to an additional wrinkle in the return process which did not come into play in the Riggs/United Virginia example.

The Midnight Deadline And Provisional Credit, A Pair That Can Leave You With A Full House Of Bad Checks.

If you remember in the prior example, Riggs received the check on Tuesday, finally decided it would not be paid on Wednesday, and returned it to United Virginia on Thursday.

However, if we take the same hypothetical and substitute a check drawn on Riggs, but deposited not at United Virginia but at a small community bank outside Memphis, the return time could be much longer. Since many small community banks do not have the resources to support their own check processing centers, they many times rely on larger banks to do their processing work. In this case, let's say the community bank has sent the Riggs check to First Tennessee to process it for them. So in this example, Riggs would have received the check from First Tennessee.

Let's assume again that Riggs processes the check, finds insufficient funds in the account, and decides to return it. This time, however, when the decision to dishonor is made, a new obstacle will be encountered: The Midnight Deadline.

Article 4 of the Uniform Commercial Code (UCC) is the law which governs check collections in each of the 50 states. The UCC mandates that if a bank dishonors a check, it must be sent back to the bank where it was first deposited by midnight of the day after the day the dishonoring bank received it. In our example, Riggs is the dishonoring bank. They received the check on Tuesday. They must send it back by midnight Wednesday, or under the UCC, they could be deemed to have finally paid the check, and not be able to return it. The only safe way for Riggs to "send" this check back to First Tennessee is to drop it in the mail. The law deems the check to be "sent" if it is in the mail and out of the control of the dishonoring bank.

Under this example, the dishonored check would probably not be back at First Tennessee until some time on Friday, and in all probability not back to the community bank until Monday. The return time in this example has now expanded to 7 days. Those funds must now be reclaimed from the customer's account. If the bank has allowed those funds to be withdrawn, they must be reclaimed from the customer. An example stretching over a broader section of the country could easily involve more processing banks, and an even longer return time.

As you can see, the return process is the real Achilles heel of the check processing system. That is why the industry over the past several years has invested so much time and effort in attempting to improve the system.

Despite its complexity and endemic limitations, the paper based payment system in this country works pretty well. As mentioned earlier, the vast majority of deposited checks are not subjected to a discreet hold and funds are, by and large, available for use by customers at least by the time the bank gets the use of the funds.

Before we delve any further into a discussion of check hold policies, let's first clarify what is meant by a "hold." There are essentially three different ways a bank can treat the availability of funds from a deposit.

Immediate Availability - This means that the bank having accepted the deposit will let you draw against it immediately, even before the bank has the funds. To the extent the customer exercises this ability the bank is actually making a loan of that amount to the customer until it collects the funds.

"Give What You Get" - In the parlance of the check processing professional this means that the funds will be available to the consumer as soon as the bank receives credit for the check from the Federal Reserve. For instance, a check deposited in a Washington, D.C. bank drawn on a Baltimore bank would be a one day item. That is, the D.C. Bank would get provisional credit for the funds the next day and a bank that "gives what it gets", would make those funds available to the customer the next business day.

An item drawn on a small bank in Oregon probably would be a 2 or 3 day item, meaning that the D.C. bank would not get provisional credit from the Fed for 2-3 days, and would not allow the customer the use of the funds until it had provisional credit for them.

The credit received from the Federal Reserve is "provisional," since it can be reversed. In the examples we cited earlier, when the checks were returned to the banks where they were received as deposits, the amount of the check was removed from the bank's account at the Federal Reserve. This occurs well before and regardless of whether the bank is able to recover the funds from its customer.

A "hold", as we will use that term, describes the situation where a bank does not allow access to the funds for some time beyond when it has received provisional credit. Holds are used on a selective basis to protect a bank when it fears there may be a risk that the item deposited could be dishonored and returned to the bank unpaid. In such cases, it would be unwise for the bank to allow the withdrawal of the funds before sufficient time had passed to allow for the forward presentment and potential return of the item. If the funds were withdrawn sooner, and the item was was returned, recovery of the funds from the customer might prove difficult.

Banks Place "Holds" on Deposited Checks Selectively and For Legitimate Business Reasons.

As we discussed above, the bank where a check is originally deposited has no way of knowing if an item is good or bad until it actually receives that item back from the dishonoring bank. Therefore, a bank with a reasonable basis for imposing a hold must delay access to the funds until sufficient time has passed to allow the check to be presented and returned if dishonored. A hold that is one day too short is of no use whatsoever.

E.F. Hutton Has Spoken On The Vulnerability Of The Check Processing System.

The recent scandal involving E.F. Hutton demonstrates all too graphically how vulnerable the system really is to someone with knowledge of how it works. The Hutton example however, only scratches the surface of the potential for fraudulent intervention in the payments system. Checks can be counterfeited, perhaps more easily than currency. We have attached to our testimony an article from the December 13, 1983 Washington Times which demonstrates the potential threat from counterfeit cashiers checks. Check kiting schemes, where worthless checks are bounced back and forth between several institutions drawn on phantom balances, are an all too often occurrence in the banking industry. Flexibility to efficiently deal with these situations is critical.

The check system is a system built on honesty. Because 99% of the checks processed in this country are good checks, it works quite well. However, safeguards need to be available to be sure it continues to work so effectively. Banks use holds as a protection in situations where the validity of the item can be reasonably doubted. Situations where there is a new account, an unknown payor on the check or an unusually large check are typically the times these safeguards come into play.

Some critics argue that since only one percent of all checks are ever returned, such hold policies are not justified by the de minimis nature of the bad check problem. While it is true that only one percent of the checks are returned on an annual basis in the United States, that still amounts to over one million checks per day. On an individual institutional basis, the dollar amount of these returned checks can be far from insignificant. Furthermore, we have no way of knowing what the volume of worthless checks would be if the industry did not take the precaution of placing holds on selected items as a reasonable precaution to avoid losses.

Currently, banks have the flexibility to place holds on items or in situations that are suspect. Costs and potential losses can be isolated to the situations which impose risk. If that flexibility is diminished, and increased losses are experienced, those costs will have to be spread over the whole customer base. Those not posing a risk will be bearing at least part of this burden. It certainly seems more equitable to impose added costs on those posing the risk, and not on the rest of our customer base.

Banks Are Not Profiting From the Use Reasonable and Prudent Use of Hold Policies

Some commentors have argued that banks are making extraordinary profits by restricting a consumers ability to withdraw their funds while investing those funds for the benefit of the bank.

Perhaps the most famous example of this allegation is one regarding an alleged quote from a Vice President at Bank of America who is supposed to have said that his bank earned 3.5 million dollars off the float each day. Attached to our testimony is a letter from Bank of America to two state legislators in Florida who had used the above cited figure in a legislative report. The attached letter makes it very clear that Bank of America does not make 3.5 million a day on the float. In fact, they have such a reasonable policy with regard to not placing holds on deposits that their annual bad check losses exceed any money they could make on the "float." The situation described in the Bank of America letter seems more typical than not of the policy of most financial institutions in this country. A very interesting statistic noted in the Bank of America letter is the fact that "holds" are placed on only 4/10 of 1% of all checks deposited, drawn on other banks.

A survey conducted by the California Banking Commissioner's office in 1984 similarly discovered that less than 1/10 of one percent of all deposits in that state were subjected to a hold. Another survey done by the Houston Clearing House Association in the greater Houston area also discovered that less than 1/10 of one percent of deposited items were subjected to a hold.

At many community banks where the customer base is well known to the management and employees of the bank, it is not uncommon for customers to receive immediate credit for deposits, thus allowing them use of the funds before the bank even has credit for them.

Most Consumers Are Not Affected By Bank Hold Policies.

Recent surveys confirm this intuitive conclusion that can be drawn from the data cited above.

Reichman Research Survey

In 1984, the Reichman Research Company did a comprehensive consumer survey on consumer attitudes for the *American Banker* newspaper. The survey showed that approximately 1/3 of consumers say that their financial institutions do not hold checks. Another 1/3 were not sure whether it did or not, thus inferring that they were not affected by check holds.

Cambridge Reports Survey

In mid-1984, Cambridge Reports did a similar survey of consumer attitudes toward financial institutions and discovered that 67% of consumers said that their main financial institution did not routinely hold their checks. An additional 13% were not sure, again, indicating that they were not impacted by check hold policies. This survey indicates that 80% of those surveyed do not experience problems with holds on deposited funds.

Given these data, it does not seem that anything approaching a majority of the public at large is being adversely impacted by bank check hold practices.

We do not intend to state that they are no institutions that are abusing the use of check holds. There may indeed be institutions which are placing holds on deposits regardless of where the checks are drawn, the account history of the depositor, the payor, or amount of the check. However, if these institutions exist, and are abusing their customers with unreasonable policies, consumer's won't stand for it, and will take their business elsewhere. As I mentioned earlier Mr. Chairman, the number of competitors is ever increasing, and if we do not provide good service to our customers, they will shop around and find a better deal.

Specific Comments on H.R.2443

Mr. Chairman, I would like to discuss some specific provisions of H.R.2443 which are most troublesome to our Association.

Scope of Coverage

The first thing that strikes us about the bill is the fact that it applies only to depository institutions. There is no need to discuss in detail with this Committee the expanding nature of the financial services industry. There are a great many entities currently providing financial services that just ten years ago may not even have existed, and yet only depository institutions are subject to the provision of your proposed legislation. Most notably omitted from coverage are the money market mutual funds. There are currently operating in this country many hundreds of these funds which hold literally billions of consumer's dollars, and most of these funds have features which allow consumers to write checks or check-like instruments against funds. If the object of this legislation is to protect all users of checks and check-like instruments, it would only seem fair and equitable that any such legislation should be applicable to all financial service providers who offer check or check-like services.

Limitation to Consumer Accounts

Coverage for all institutions should be limited to consumer accounts (those primarily for personal, family or household use). Business accounts typically have unique arrangements with the financial institution which encompass a broad range of services. Availability of deposits is often only one aspect of a detailed agreement between the parties that is well understood and agreed upon.

Since virtually all of the testimony alleging problems with financial institutions hold policies has been from consumer groups, this limitation seems reasonable.

Goal of One Day/Three Day Availability

It also appears to be a basic concept of the bill that ultimately all paper-based deposits could be made available no later than the fourth day after deposit. This premise, based on the mechanics of processing paper instruments, does not seem feasible in the forseeable future.

The steps outlined in the check processing examples discussed above, take a finite period of time to accomplish. Transactions based on paper instruments contemplate the presentment of the instrument itself for the crediting of funds to an account. The removal of funds from an account due to the dishonoring of a deposited item, requires the return of the invalid instrument to the institution where it was deposited. The period of time necessary to accomplish these physical tasks leads us to the conclusion that attainment of the goals set forth in the legislation would ultimately require a wholesale conversion to an electronic mode of payment. To achieve that goal in a five year period seems quite unlikely based on past experience.

Automatic teller machines, which are the most rudimentary form of electronic technology, have been in existence in this country for over ten years and we are at this point just beginning to see a 50 percent usage by customers with access to those machines. Many non-users say they simply are not comfortable dealing with a machine.

Consumers are comfortable with checks. It is a technology they can understand. An attempt to impose, in such a short period of time, a wholesale conversion to an electronic mode of payment and to require all participants in the payments system to install computer terminals, would most certainly result in a consumer revolt. In addition, the cost to the industry, and ultimately to the consumer, would be monumental. Abandonment of the existing paper-based payment system, which accounts for the vast majority of consumer and commercial payments in this country, and replacing it with an electronic based system would entail costs running well into the billions of dollars.

Consumers have not expressed a general dissatisfaction with the check system. When they do, the marketplace will develop and implement alternatives which meet their needs.

Elimination of Legislative Restrictions

In the vein of operational changes which may allow for improvements in the return system, the bill does offer some proposals which might prove most constructive.

Section 3(b)(3), (4), and (5) instruct the Federal Reserve Board to consider regulations which would:

- Allow the Federal Reserve to accept all return items.
- Allow for direct return of deposited checks, without following the original chain of endorsement.
- Allow payor institutions to keep return items past the midnight deadline if that practice would facilitate more rapid return of the items.

While achievement of these three operational changes on a system-wide basis may require statutory enactment rather than mere regulatory approval, the concepts are ones which hold real promise. The restrictions these proposals would eliminate predate many of the improvements in automated check processing which have evolved since the nationwide enactment of the UCC almost 25 years ago. Such changes may help facilitate a new approach to return item handling, dramatically reducing return times and hold periods. This radical new approach will be discussed later in my testimony.

Statutory Available Schedule

H.R.2443 also proposes to establish a statutorily based set of maximum time frames for the availability of checks based on the location of the payor institution relative to the institution of first deposit. The Committee is, of course, well aware that a few states have already implemented statewide availability schedule that is in some respects similar to the one set forth in H.R.2443. However, those states have approached the establishment of such a schedule by authorizing the state financial institution regulatory bodies to study the actual processing and return times applicable to the various categories of checks and subsequently to establish maximum availability schedules which would not jeopardize the safety and soundness of any of the institutions involved. To establish such a system on a statutory basis without an attendant study of the risk on a nationwide basis clearly might leave a significant number of financial institutions open to the potential for fraudulent activity which could jeopardize their very existence.

While we are strenuously opposed to the establishment of a nationwide availability schedule, we are unalterably opposed to having it established in the inflexible framework of a legislative enactment. If such a schedule were to be established, the only prudent way to do so would be to have the Federal Reserve study the issue to assess all of the risks to the industry and provide by regulation all of the pertinent safeguards to avoid any threat to the safety and soundness of the system. It would also be imperative that the Federal Reserve, as part of their deliberations, be required to consult with representatives of the affected financial services industry to be sure that the all potential risks are identified, quantified, and appropriately dealt with by regulatory safeguards. While H.R.2443 attempts to incorporate at least some of the safeguards found in the existing state laws, implementation of such a system on a nationwide basis could pose far greater risks and opportunities for nefarious conduct, which must be safeguarded against.

States which have enacted legislation such as this have left the establishment of the schedule and relevant safeguards to be established by the regulators who are more versed in the vicissitudes of the payments system. Such an approach is the only reasonable and prudent approach.

Payment of Interest on Deposits

Another aspect of H.R.2443 upon which we would like to comment, Mr. Chairman, is the proposal in section 7 to require that deposits to interest bearing accounts accrue interest from the business day of deposit. As explained earlier in our testimony, financial institutions do not receive provisional credit for those funds until at least the next business day and sometimes the second and third business day after the date of deposit. To require that interest be paid on funds we have not yet received certainly is not a fair or equitable proposal.

Industry Efforts and Improvement of the Return Item System

It has been alleged that the industry does not care about the speed with which return items are processed. The time and effort expended by various industry groups over the past several years directed at improving and expediting the return process belies that allegation.

Recent surveys indicate that 15 percent of all return items take more than ten days to return to the institution where they were originally deposited. These items average over $1,000 in value. This statistic alone is sufficient to indicate that industry has a very keen interest in assuring timely return of dishonored checks to safeguard the viability of the system. An ABA/FRB return item experiment is currently under way in the Dallas Federal Reserve District attempting to devise a method for expediting the return process.

Concepts developed in that program have resulted in a major new pilot program involving 100 financial institutions, (banks, savings and loans, credit unions) in four different Federal Reserve Districts, which will test a radically new approach to automating return check processing. This approach will be tested beginning in November for 90 days.

This new pilot, simply put, will use the existing automated check processing technology to return dishonored checks to the institution where they were first deposited eliminating the vast majority of the manual processing time. As I mentioned earlier, Mr. Chairman, sections 3(b)(3), (4) and (5) of your bill would provide useful changes to existing law which would be critical to implementation of this automated return system should it prove successful. We think these proposals are very concrete and positive steps toward improving the return system.

In short, we feel this new pilot program represents a major leap forward in the return item handling process. Since it is already in the works, it could provide a rapid solution which is both beneficial to consumers and productive to the industry as a whole. While the efforts we are making do not make headlines, they are ongoing and diligent. The new pilot we will test in November may provide some real answers in the effort to reduce maximum hold time.

In summary Mr. Chairman, we recognize and appreciate the concerns of this Committee with the issue of delayed access to deposits. As I have discussed, there is a reasonable and legitimate business need for the use of check holds on a selective basis as long as we are using a paper based payment system. The goals set forth in H.R.2443 are laudable. Some of those goals may not be attainable as long as we continue to use a payment system which requires the movement of paper documents to accomplish funds transfers between payor and payee. Other aspects of the proposal, specifically to reduce the time periods that certain deposits are held, may be attainable through different and less restrictive means via programs which are already under development. If this Committee will lend its support to the continued development of these programs, the achievement of these goals may be achieved in a very expeditious manner.

Thank you Mr. Chairman, for allowing me to present the views of the American Bankers Association. I would be glad to answer any questions you or the Committee may have.

Sample Policy Statement

Holds on Retail Customer Accounts

It is ____(name of bank)______ 's policy to place holds on customer accounts to reduce the risk of check kites and of checks returned for insufficient funds or any other reason to customer accounts in which the balance is insufficient to cover the returned item.

Generally, holds will be placed on checks deposited from sources not known to the bank in newly opened retail customer accounts. A new account is considered to be one that has been open for no more than (period of time - e.g., one month, six months or other). In addition, unusually large items deposited to an account, such as those over __(dollar value, e.g., $500)__ may also have a hold placed on them.

The length of a hold will reflect the bank's normal experience in dealing with checks returned from the location on which the deposited item was drawn. Normally, the hold will not exceed ____ days from any location within the United States.

Customers will be informed at the time an account is opened of this bank's hold policy. (Include the following if applicable) And tellers will inform customers at the time a deposit is made on which a hold is placed of the applicability and duration of the hold. (Branch managers, personal banking officers, or other title), upon customer request, have the authority to release holds on items, in their discretion, when a customer is known to them, the drawer of the check is reliable, or other circumstances exist to justify releasing a hold. It is the policy of this bank to minimize the use of holds to the extent consistent with the safety and soundness of the bank and the avoidance of unnecessary losses to the bank.

Sample Disclosure Statement

Holds on Deposited Checks

When you deposit a check drawn on another bank, there is always a time delay before the check reaches the bank on which it was drawn and we receive payment. Our policy is to provide the earliest realistic availability of funds on deposited items. But we must reserve the right to place a "hold" for the amount of the check you deposit until we have collected those funds.

Normally, we would place "holds" on a check you deposit if:

(Include only those that apply)

1. Your account is new, and it has not yet developed enough history of activity for us to know you;
2. You deposit a check for an unusually large amount;
3. Your check is drawn on another bank or financial institution;
4. You make a cash back or split deposit;
5. Your check is issued by a person or organization whose reliability is not known to us.

(Use the following if applicable)

When we must place a "hold" on your deposit, it may be necessary for us to ask you not to withdraw these "uncollected funds" from your account. When this occurs, your teller will inform you that a "hold" has been placed on your check, and the estimated time it will take for the check to be paid. Normally, holds will be for _____ business days on checks drawn on banks in (town, city, state) and for _____ business days on checks drawn from outside this area.

Of course, deposits into any interest-bearing account will begin to earn interest as soon as they are made whether a "hold" is placed on the deposit or not. We hope this policy will not inconvenience you, and encourage you to speak with one of our officers concerning any questions you may have about this policy.

January 25, 1983 Bankers News Weekly

ACH Gives Bank Customers Immediate Funds Availability

Delayed availability may be a problem for some bank customers, but not for certain college students who bank with the $330-million-asset The Howard Bank, Burlington, Vt.

Its "Money-From-Home" program, targeted specifically for its college-community market area, required little modification of its bank operating systems and provided it with a marketing plus to attract new out-of-town depositors.

The program relies on the automated clearing house system and prior authorization by a parent for transfers from a savings or checking account to the student's account at The Howard Bank. Unlike money from home by a check, this program guarantees immediate availability of funds.

"Money-From-Home makes living away from home more secure," the Bank's promotional material states.

In marketing its program to the college students, including the 10,000-plus attending the University of Vermont, the largest of the area's several colleges, The Howard Bank emphasizes immediate access to the money. The "Money-From-Home" program, the bank says, "may be just the ticket to insure money in the bank when you need it." The convenience of its 24-hour Access teller network is also stressed.

Parents are told that the "Money-From-Home" program prevents the "distressing 'send-money-quick'" telephone calls or letters and "insures the flow of money even when away on business or in the case of illness."

A member of the New England Automated Clearing House, The Howard Bank already had the operations system in place, due to its bill-paying and other preauthorized transfer credit and debit programs. Few operations changes had to be made to accommodate this program.

"It is a convenient way for a parent to be sure a child has money in the bank on a regularly scheduled date," says Robert F. Curry, vice president for the Bank's data-processing department.

The Howard Bank complies with Reg. E requirements by providing the student notice of the receipt of the preauthorized credit to the account. It does this by descriptive statement on the monthly statement provided for each "Money-From-Home" account.

Its "Money-From-Home" Agreement form has to be signed by the parent, who is advised by the form that his or her bank of deposit "is required by the Federal Electronic Fund Transfer Act to provide you with certain disclosures before making the first electronic fund transfer from your account with this agreement."

(Continued on page 8)

(Continued from page 7)

The "Money-From-Home" service must be renewed each semester, which effectively closes the account and covers instances when a student does not return to school and, also, gives a parent the opportunity to adjust the amount of money to be transferred to the student.

The Bank keeps its check processing for the "Money-From-Home" accounts to a minimum by tying the account to its 24-hour Access teller network, which has ATMs conveniently located on or near the area's college campuses. One ATM is located in the bookstore of the University of Vermont.

Curry acknowledges the "Money-From-Home" accounts have few checks drawn on them. Use of the ATM network also reduces the occurrence of overdrawn accounts. An on-line ATM won't permit more money to be withdrawn from the account than is in the account. "If a student wants $50, and the account has only $30 in it, the machine will allow only $30 to be withdrawn," he notes.

"It is a neat little program from an operations standpoint," Curry says.

Washington Times
Dec. 13, 1983

Man held in scam involving bad checks

By Stephanie Voss
WASHINGTON TIMES STAFF

Until last week, his wife thought he worked for a railroad, police said.

So did the people in cities up and down the East Coast who traded their coin collections and porcelain figures for the bogus cashier's checks that he wrote, police say.

Walter Victor Rubilliard Jr., 32, has been charged with grand larceny by false pretenses and forging a bank note.

"He was a traveling man," said Arlington Detective William Cowell.

Mr. Rubilliard, also known as Harold Peters, Harry Peters, John Arrenson and Vincent Rubilliard, was arrested last Thursday at the Springfield Mall in Fairfax.

The arrest came after a tip from a woman who had agreed to meet a man at the mall to sell him her valuables.

Walter Victor Rubilliard Jr.

An undercover policewoman went in her place, and Mr. Rubilliard was arrested when the officer received a home-made cashier's check in the exchange, police said.

Mr. Rubilliard has signed a statement detailing several such purchases, police said.

Arlington detectives also have heard complaints about three incidents in D.C. and at least one in Montgomery County.

Police said Mr. Rubilliard told them he resold several items, collecting more than $13,000 from pawnshops and art dealers.

Most of the items are silver coins or plates and figurines made in Germany. Hummel figurines, imported from Bavaria and based on the designs of a convent nun, Sister I. Maria Hummel, range in price from $40 to $10,000.

Detectives who have been tracing complaints from bilked residents say Mr. Rubilliard is in the Arlington County jail on $25,000 bond.

Detective Cowell first heard about an alleged counterfeiter last week when a Fairfax woman told him she had sold five Hummel plates for $1,100 to a man who arranged to meet her at the Ballston Metro stop.

"He's a very artistic young man," the detective said, grinning.

"His method was startling," he added. "The reason he was so hard to arrest is he worked by himself."

Detective Cowell outlined an approach described by victims of scams similar to the one explained in Mr. Rubilliard's statement.

"Since February, he was going up and down the East Coast from Boston to Florida. He would get a paper in the local jurisdiction and see silver, coin collections or Hummels for sale.

"He would call to negotiate and explain that he was a railroad employee and did not have transportation, so he would arrange to meet the seller at a place accessible by public transportation. He would explain that he would have a cashier's check. He would manufacture a cashier's check — and he was quite good at it.

"To the victim, not being a banker or a police officer, it would seem normal," Detective Cowell said.

Mr. Rubilliard, originally from Rhode Island, has a wife and two sons in Jacksonville, Fla., police said.

His wife thought he worked for the railroad, and Mr. Rubilliard had a Conrail identification card — and a pay stub — to prove it, Detective Cowell said. The employee identification was home-made, he said.

Police said they are tracing money sent to Jacksonville by wire.

Although few details were available, Arlington police said Mr. Rubilliard had an arrest record on forgery charges dating to 1976; but no convictions were documented.

If convicted of the Arlington charges, Mr. Rubilliard could face 30 years in prison.

Since Mr. Rubilliard's arrest, Montgomery County, a county in New York and several jurisdictions in Massachusetts have asked Arlington officials to hold him for questioning.

Area police are convinced that there are more local victims of what they believe is a long-term counterfeiting scheme.

"These victims are upper middle-class people. They're intelligent. He's just very convincing," said Detective Cowell, who said he hopes to hear from anyone who has suspicions that they have received invalid checks.

"I know there are a lot of people out there," he added.

#

March 15, 1984

The Honorable Hamilton D. Upchurch
State Representative
State Capitol
Tallahassee, Florida 32301

The Honorable Thomas Gallagher
State Representative
Capitol Building
Tallahassee, Florida 32301

Gentlemen,

A recent issue of "Washington Financial Reports" (Vol. 42, No. 10; March 5, 1984) included the attached article on your legislative efforts in Florida to regulate bank hold policies on checks.

The article quotes from a staff report on your bill stating: "a vice president at San Francisco's Bank of America reported earlier this year that his bank earns $3.5 million off the float each day and suffers only about $3 million of bad check losses during an entire year."

This information was probably obtained by your staff from a report in "Time" magazine of May 16, 1983, which quotes the same figures.

We feel it is important to let you know that these figures do not correctly reflect actual revenue Bank of America earns under existing hold policies.

This very issue was raised in connection with Bank of America's testimony before the Senate Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing, and Urban Affairs in 1982. At that time, Senator Chafee requested that we provide him information on the bank's revenue from hold policies. In order to respond accurately, bank personnel conducted a lengthy analysis of transaction data. The following were the findings:

- The Bank served over 4 million customers, who deposited 5 million checks daily that were drawn on other banks.
- Total non-Bank of America check deposits were $1.8 billion daily.

- The average daily number of holds was only 1,868 or .04% of the total checks deposited on other banks.
- Total average daily holds amounted to only $5.25 million or .3% of total deposits.
- The average consumer account remained on deposit for an average of 15.7 days. The bank's policy was to place holds on checks for 8 to 18 days, including week-ends, where there was a potential loss exposure.

Let's presume all checks might be held for 18 days, which is favorable to the bank. Since the average check stayed on deposit for 15.7 days, the bank would have been retaining these funds for an additional 2.3 days, thereby increasing deposits by $12.08 million average daily. Assuming the bank could receive 15% on these funds, it would have earned $1.82 million additional annual income through its hold policies (assuming also a high interest rate environment). Under a scenario less favorable to the bank, if no checks were held for more than 15.7 days, no additional income would have been earned.

Bank of America incurred $2.9 million in losses for 1981 on items drawn on other banks, covering situations where checks were deposited or cashed checks were paid and then returned by other banks. This is 60% greater than the earnings projected above for the longest hold schedule. In short, Bank of America's hold policy was and is designed to minimize losses to the bank, not to generate profits.

Although this analysis relies on data collected in 1981-82, we're reasonably certain the same analysis would generate the same conclusion using current data.

We hope this will clear up any misconceptions concerning revenue generated by Bank of America's existing hold policies that you might have drawn from the "Time" article. We felt it important to clarify this point so that you and your colleagues in the Florida legislature will have recourse to accurate data while deliberating the legislation you have proposed.

Very truly yours,

Irwin L. Gubman
Senior Vice President,
Associate General Counsel and
Director of Government Relations

Chairman **St Germain**. Mr. Glass, we appreciate the pilot program and the efforts being initiated; they are very timely in view of the number of co-sponsors on this legislation. I hope you realize that, as you heard from quite a few members, we are going to proceed. However, whatever you can do to improve upon what we do will be more than welcome.

I would point out to the members of the committee, however, that the pilot program that Mr. Glass just mentioned was reported in the ABA Bankers Newsweekly recently. The program will use existing technologies. ABA says that the current mess of returning checks can take up to 15 days, but it is hoped that this new method will reduce the time to 2 days, using existing equipment and technology.

Now, that is fantastic. The consumers of this Nation, I am sure, will be very excited and very pleased.

Mr. Tomson.

STATEMENT OF O.J. TOMSON, PRESIDENT AND CHAIRMAN, CITIZENS NATIONAL BANK, CHARLES CITY, IA, AND CHAIRMAN, BANK OPERATIONS COMMITTEE, INDEPENDENT BANKERS ASSOCIATION OF AMERICA

Mr. **Tomson**. Thank you, Mr. Chairman.

I am O.J. Tomson, chairman of the bank operations committee of the Independent Bankers Association of America. I also serve as chairman of the Citizens National Bank of Charles City, IA.

I appreciate this opportunity to comment on your bill, H.R. 2443, Mr. Chairman.

In conjunction with my testimony, which offers more general comments basically in opposition to the bill, I have 10 specific items for you to consider which relate to the subject matter of the proposed legislation.

Number one is a recent amendment to regulation J, which the Federal Reserve System recently imposed. It is in the initial stages of instituting very significant improvements. Commencing October 1, notifying the bank of first deposit on return items of $2,500 and over is mandatory. This is a progressive regulation which should result in continuing improvement to the payment system over time.

While additional regulation like H.R. 2443 may well now be redundant to this effort, more needs to be done now to improve the system. For example, the Fed already has software in place for use by all financial institutions to permit direct communications through the use of small and inexpensive computer terminals.

One challenge, however, remains. There are 12 Federal Reserve banks and they still have an array of different software. Our association is urging the Fed to adopt a single system to support this important effort.

Perhaps this is one area, Mr. Chairman, where you could be helpful to us in the country. Because, by doing so, we feel that the cost could be reduced significantly, number one, many more institutions would use this system if it was a lower cost entry and if it was a universal communications system, and there would be great benefit to the public through speedier returns. This would be significant.

There is no reason that interbank communications couldn't be just as good as the telephone system used to be.

Two, progress in improvement in the payment system in this decade should be noted. Progress has been remarkable since the passage of the Monetary Control Act of 1980 and elimination of float in this nation and the plateauing of costs involved with check clearance.

The Fed obviously has been doing its job as it was directed by Congress to do. And the general public has been benefitted as was intended.

Three, as was mentioned in the opening comments, the payment system is not a static thing. Its character is changing daily with the advance of electronics. The Fed needs flexibility to deal with change and an inflexible statute may prove undesirable in the long run.

Four, consider the cost of this legislation. The cost of compliance is ultimately going to be borne by the consumer. If we have more printing, more supplies, more postage, more labor, this is going to add up to higher service charges.

The act calls for creation of a new payment system advisory council. The Fed already has a consumer advisory council in place.

At a time when Federal budget deficits are beyond control, we are adding another council and creating new expenses. Travel expenses alone on this is going to run into the thousands.

In the cost of enforcement, I don't think it should be overlooked, especially at a time when regulators need to concentrate more on asset quality and less on some of the peripheral problems.

Five, dollar limits imposed may actually invite consumer fraud. Those intent upon deception will find it easy to stay under the dollar thresholds imposed by sections 4(a) and 5(a) of the proposed legislation.

Six, the act could result in a setback for the consumer if institutions refuse to accept items for deposit to avoid risk and resort to sending them for collection outside the system.

Seven, H.R. 2443 imposes significant penalties on financial institutions under section 13 for noncompliance but it does nothing to impose any civil liability on the consumer who perpetrates a fraud against the financial institution which may well be attempting to give good service. Shouldn't this be a two-edged sword?

Eight, 2443 says nothing regarding the continual abhorrent practice called remote or controlled disbursement.

This practice continues in spite of the Monetary Control Act and the Federal Reserve System's efforts to deal with it. It is promoted by the large money center banks and their corporate depositors intent on beating the system.

I think if you would level your guns on this practice, you could be very instrumental in removing large dollar amounts of uncollected funds from all of our balance sheets.

Chairman St Germain. Mr. Tomson, today on this bill we are trying to help the consumer. Most of the time we are asked to do things for you in the industry. This time around we are trying to help the consumer.

Gee, can't you understand that?

Mr. Tomson. I appreciate that.

Chairman St Germain. You know? Think of that poor consumer sometime. I am reading some stuff here that is unbelievable about what happens in banks. Proceed.

Mr. Tomson. The real problem behind expediting availability of funds is the problem of risk. The challenge here for you, which I certainly appreciate, and for the benefit of the consumer public, is that the practices employed by the banks and financial institutions, which are quasipublic institutions, has to be equated with risks involved.

Out in the country, many of us feel the regulators really have this authority because they probably are more intimidating out in the country than they are in some of the larger cities and larger banks.

But, in conclusion, I would remind you that the real risk in our payment system today rests with the holders of the very large and multiple-dollar daylight overdrafts which are incurred in the large-dollar private-bank wire system and Federal Reserve wire system at our Federal Reserve banks.

Dealing with this problem intelligently is a major challenge for the Federal Reserve and for all participants in the payment system, and a satisfactory solution is necessary in order to prevent in the future the same type of crisis that was presented to us not too long ago.

If correction of a problem of that magnitude, which is well under way, by the way, and is being worked out effectively by a large dollar payment system advisory group without any cost to the Government or to the Federal Reserve System, is left to this group for solution, are we not overreacting to the problems we are addressing here? Thank you.

Chairman St Germain. I assure you we will take your caveats into consideration. We will not overreact. We will just act.

[The prepared statement of Mr. Tomson, with attachments, follows:]

STATEMENT OF O.J. TOMSON, PRESIDENT AND CHAIRMAN, CITIZENS NATIONAL BANK, CHARLES CITY, IA, AND CHAIRMAN OF BANK OPERATIONS COMMITTEE OF INDEPENDENT BANKERS ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. Chairman and Members of the Committee, my name is O.J. Tomson and I am Chairman of the Bank Operations Committee of the Independent Bankers Association of America. The IBAA is a national trade association representing 7,500 commercial banks throughout the nation. I also serve as chairman and president of the Citizens National Bank in Charles City, Iowa.

I appreciate this opportunity to comment on your bill, H.R. 2443, the "Expedited Funds Availability Act."

Mr. Chairman, I am sympathetic to the concerns that have led you, and many of your colleagues, to support this--and similar--legislation. Frankly, I was surprised to learn of the very strict "hold" policies imposed by many financial institutions in the Washington, D.C. area and in other urban centers. I understand that even the Wright Patman Congressional Credit Union that serves many Members of Congress and their staffs routinely imposes stiff holds on its members' deposits.

It must be exasperating to have to wait for access to funds that you know the financial institution will collect without trouble. Nevertheless, do not support H.R. 2443.

Before I discuss our concerns about this legislation, let me outline the results of a survey we completed last year. We asked a random sample--one quarter of our membership--about their deposit availability policies.

The survey questionnaire asked the banks to indicate the number of days they delayed availability for various kinds of deposits. However, survey results and anecdotal evidence indicate that the great majority of IBAA members have not adopted rigid across-the-board policies. Instead, they give immediate availability in most cases. This was particularly true in the case of local checks, payroll checks and U.S. Government checks, or any check deposited into an existing, rather than new, account. As one banker said: "I rely on my customer, not on the piece of paper."

Specifically, 84% of the banks did not list any delay for U.S. Government checks deposited into existing accounts. Another 12% reported one to three days of delay. In contrast, 50% reported that they did have a formal policy for out-of-state checks deposited into new accounts. Delays vary from one to ten days for these deposits.

Payroll checks deposited in new accounts received a somewhat better reception, with 55% of the banks falling into the no-formal-policy category, and another 21% making funds available in one to three days.

Out-of-state checks deposited into existing accounts fell between the most-favored government-check category, and similar deposits made into new accounts. Over half (55%) have no formal policy, while another 21% make the funds available in one to three days.

Our member banks follow these policies because they operate in a much different world than we find here in Washington or in New York. Our bankers know their customers and know that those people will make up any losses incurred from the occasional bad check they deposit.

This does not mean, however, that our members would find it easy to comply with the new rules set forth in H.R. 2443. While they may be generally following the outlines of this bill, if it were to pass they would have to make certain that they made no slip-ups. Otherwise, the full enforcement mechanism of the appropriate regulatory agency could be arrayed against them. The tellers would be on the front lines of this battle, and in most of our banks there would be no full-time "compliance officer" standing at his or her shoulder to advise whether the exception in "section 5(b)" applies or not.

Our banks already have reams of regulations to consult when they do business. Banking is a special business with special benefits and responsibilities, and obviously regulations are needed. But it is vital that we maintain a sense of proportion. Every additional regulation has a compliance cost which must be figured into our bottom line.

To achieve compliance with the goals of this legislation, a new federal statute may be unnecessary. It is ironic that we are discussing Congressional legislation at this time, since just last week the Federal Reserve implemented a requirement that banks quickly notify the bank of first deposit if it does not honor a check of $2,500 or more. In addition, last year the Comptroller of the Currency, the FDIC, the FHLBB and the Fed issued a policy statement which "calls for financial institutions that delay availability to review and disclose their policies, and to refrain from imposing unnecessary delays on all checks, particularly on Social Security and other government checks."

These two initiatives may well go far in dealing with this problem. I urge you to continue to permit the agencies, and particularly the Federal Reserve, to improve the notification process. Its major new policy to do that has been effective for little more than a week. We should give it some time to show noticeable improvements in the availability of major deposits.

The interagency deposit availability policy announced last year has been in effect for approximately eighteen months. Many banks have been examined only once since then. This is simply not enough experience to determine how effective the policy is and if examiner recommendations are being followed.

Since that policy was announced, examiners have been reviewing banks' deposit availability policies. For example, the Federal Reserve's examiners use a 15-part questionnaire to determine whether a bank is complying with the policy statement (attached). If the examiners are not satisfied, this is noted in the recommendations for changes that the examiners make to the bank. The completed questionnaires are attached to the examination reports that are sent to the Board of Governors. The Federal Reserve staff is using this information for a survey of banks' funds availability policies.

I understand the impatience of some of the Members of this Committee to provide faster relief to their constituents on this issue. Some might even suggest that if Congress imposes strict time limits on deposit holds that the banking system will be forced to respond by providing much faster notification of dishonored checks.

However, as a banker who has closely followed developments in the payments system, I hope you will give us, and the agencies, some additional time to correct the situation. If after a reasonable period the money center banks persist in "playing the float" to the disadvantage of the consumer, then the agencies should be given the power to end that practice.

However, I think it would be a mistake to impose strict deadlines in Federal legislation.

The proposed legislation does not address the question of risk. It deals with the problem of consumer convenience. Risk is ever present in our nation's payments system, with the real risks being held by our Federal Reserve Banks through large multi-billion dollar daylight overdrafts incurred through settlements on private wire systems and the Fedwire.

The correction of this problem is well under way and is being worked out effectively on a voluntary basis by a Large Dollar Payments System Advisory Group without any cost to the Government or the Fed.

If something so significant as the daylight overdraft problem is left for voluntary correction, are we not overreacting to the consumer problems we're addressing here.

Thank you for this opportunity to testify.

DSRB # ____________________

DAF Examination Checklist and Survey Instrument

Bank Name ____________________ In Bank Hours Spent on DAF ____________

____________________ Total Assets (in thousands) ____________

Location ____________________

(To be used when reviewing a bank's compliance with the interagency policy statement on delayed availability practices. A negative response to questions 2-13 may indicate that the bank has not adequately addressed the provisions of policy statement or implemented its disclosed policy.)

	Circle Yes or No or insert N/A	
1. Does the bank delay funds availability on paper-check deposits?		
a) Automatically on all deposits?	Yes	No
b) Automatically on particular types of deposits?	Yes	No
c) On an exception basis only?	Yes	No

(If the answer to each item in 1 is "No" then the examiner need not complete the remaining portions of this checklist)

2. Are delayed availability policies in writing?	Yes	No
3. Do interviews with bank personnel indicate that written policies have been communicated to staff who actually delay availability on items?	Yes	No
4. If policies are informal (not in writing), have they been communicated to staff who actually delay availability on items?	Yes	No
5. Has the bank reviewed its delayed availability policies since the policy statement was issued (March 22, 1984)?	Yes	No

DSBB # ____________________

6. If the answer to 5 is yes, were delay time-frames reduced? Yes No

   (please give details)

7. a) If the answer to 1. a) is yes, list the number of days the following types of items are held before credit is given to the depositor's account:

Type of Item	No. of Days
Social Security check	
Other Government check	
On us item	
Out-of-city item	
Item under $100	
Item $100 or more	

   b) Do these time-frames correspond to what is stated in the written policy? Yes No
   or, what you were told when interviewing bank personnel? Yes No

8. a) If the answer to 1. b) is yes, list the number of days the following types of items are held (as applicable) before credit is given to the depositor's account:

Type of Item	No. of Days
Social Security check	
Other Government check	
On us item	
Out-of-city item	
Item under $100	
Item $100 or more	

   b) Do these time-frames correspond to what is stated in the written policy? Yes No
   or, what you were told when interviewing bank personnel? Yes No

DSHR # ____________________

9. a) If the answer to 1. c) is yes, does the bank take any of the following, or similar, factor(s) into account before delaying availability:

a) length of time the deposit account has been maintained	Yes	No
b) bank experience with the depositor	Yes	No
c) identity of drawer	Yes	No
d) type of check	Yes	No
e) location of the payor depository institution	Yes	No

f) Other factors (specify) __________________________

b) If the answer to 1(c) is yes, and the decision is made to delay availability on a deposit, list the number of days (or range of days) credit would be delayed on the following types of deposit items:

Type of Item	No. of Days
Social Security check	
Other Government check	
On us item	
Out-of-city item	
Item under $100	
Item $100 or more	

10. a) Does the bank disclose delayed availability policies to depositors when they open an account?	Yes	No
b) in writing?	Yes	No
c) in writing in a form they can keep?	Yes	No

DSBR # ______________

		Yes	No
11.	a) Does the bank disclose delayed availability policies to depositors at the time a deposit is made and a hold is placed on the item?	Yes	No
	b) If yes, how is disclosure made?		
12.	a) Does bank policy provide that a customer may request that an exception be made from the standard delay practice?	Yes	No
	b) If yes, how is customer notified of this possibility?		
13.	Does the bank refrain from holding an item past the point at which the bank is given credit for the item by the Federal Reserve Bank (provisional credit)?	Yes	No

- -

14. In the examiner's judgment has the bank adequately addressed the provisions of the policy statement? Yes No

15. If the answer to 14 is no, please check which of the following reason(s) best support your conclusion:

______ a. The bank does not disclose its DAF policies in an effective manner.

______ b. The bank has not reviewed its DAF policies since 3-22-84.

______ c. The bank automatically delays availability in excess of the provisional crediting date on all items.

______ d. The bank delays availability on Social Security or other government checks.

DSBB # ____________

____ e. The bank does not take the following or similar factors into account before placing a hold on an item -

- ____ 1) length of time the account has been maintained.
- ____ 2) bank experience with the depositor
- ____ 3) the identity of the drawer
- ____ 4) the type of check
- ____ 5) the location of the payor institution

____ f. Customers are not notified that they may request that an exception be made to the automatic delay period.

____ g. Other. Please detail below.

Delayed Availability of Funds Worksheet

Name of Bank: ____________________

Location: ____________________

Date of Examination: ____________________

Type of Paper-Check Deposit	Description of Deposit Account(s) Sampled (Checking, Savings, NOW Acct., etc.)	Number of Days Availability Delayed		Number of Days FRB Delays Availability (Provisional Crediting Period)	Comments
		Policy	Actual		
1. Social Security Check					
2. Other government check					
3. On us item					
4. Out-of-city item					
5. Item under $100					
6. Item $100 or more					

Chairman **St Germain**. Now we will hear from Mr. Wilhelm, who appears on behalf of the Consumer Bankers Association.

You have been mightily introduced and lauded, so we are expecting exciting things from you.

STATEMENT OF GREGORY O. WILHELM, VICE PRESIDENT, WELLS FARGO BANK, ON BEHALF OF THE CONSUMER BANKERS ASSOCIATION

Mr. **Wilhelm**. Thank you, Mr. Chairman.

I would like to extend special thanks to Mr. Shumway and Mr. Dreier for the kind welcome they gave me, and would like to point out that the generous bestowal of the title they also placed upon me should not be understood to mean I am an advocate of delaying availability.

The Consumer Bankers Association does appreciate the opportunity to appear before the subcommittee to discuss the issue of funds availability and to comment on H.R. 2443, the Expedited Funds Availability Act.

At the outset, let us commend the chairman and the subcommittee for holding this hearing and seeking input from the industry that is greatly affected by the proposal.

We note the chairman's bill has approximately 150 cosponsors and that action by the committee is likely. Nonetheless, we do not believe that Federal legislation, especially in the form of a mandated availability schedule which addresses only symptoms and not causes, is prudent at this time.

We have a number of additional specific concerns with H.R. 2443 and offer this testimony to make you aware of some problems it will create in its present form.

CBA supports the goals of your legislation. Depositors should be entitled routinely to have the use of deposited funds as rapidly as is possible. They should be informed of funds availability policies.

Interest on funds deposited into interest-bearing accounts should be credited promptly. We are concerned that attempts to effect these goals may lose sight of principles that help assure the efficiency and safety and soundness of the payments system, some of which are inherent in the Uniform Commercial Code.

Delayed funds availability is not the result of arbitrary policymaking, but rather the result of fundamental flaws in the check collection system that adversely affect both banks and their customers. These are not easily remedied.

In addition to the operational complexities involved, we ask you to recognize that financial institutions, in increasing numbers, have been voluntarily reviewing, revising and disclosing their funds availability policies to their customers.

Furthermore, competition for customers in the financial services industry has encouraged our members to continue to review, revise, and disclose their policies to improve good customer relations.

Our testimony today focuses on the way the payment system works, the reason for holds on deposits, information on actual experience in the area, and CBA's response to H.R. 2443.

We have in our full statement made analyses of the problems in the present process and we have offered solutions. Let me summarize our recommendations in view of the time constraints.

First, we support the mandate that the Federal Reserve System should develop a system to automate the flow of returned items just as the forward check collection process is now automated, so the depositor or the bank will know as quickly as possible if a check is not paid.

Automated return processing would remove much of the uncertainty, reducing the need to delay availability on deposits.

We also support development of a cost-effective check endorsement standard applicable to all participants in the payment system, including the Federal Reserve banks, to assure reliability of the return system.

Second, we support the concept of crediting interest-bearing deposit accounts no later than the date on which the depository institution receives provisional credit for the deposit.

Most CBA member institutions have already begun computing interest either on the date of deposit or when provisional credit has been received.

Third, we endorse the concept that financial institutions should readily disclose their policies regarding funds availability. We have already urged our members to make the type of information available to customers.

In order to avoid many of the problems depository institutions experience with the design of truth-in-lending disclosures, we would be happy to provide suggestions to the subcommittee on this particular section of the legislation.

Fourth, Congress should explore the need for preemption of State laws to ensure uniformity within the national payment system.

We are, however, strongly opposed to the rigid availability schedules, the $250 direct notification requirement, and the civil liability requirements that have been proposed.

Strict return item schedules and civil liability standards do little to address the basic flaws in the check collection system. Moreover, a $250 direct notification requirement would tend to require an even more labor-intensive and costly effort than the present system in direct conflict with the concept of devising a more efficient system based on present and future electronic technology.

CBA appreciates your efforts, Mr. Chairman, and the efforts of the subcommittee in this area. We will be glad to provide information and work with the subcommittee staff to develop ways to deal with the return item handling and the present checks collection system.

We all agree that creative innovations are required to serve institutions and their customers well.

Thank you for the opportunity to testify today and I will certainly be happy to answer any questions the subcommittee may have.

[Mr. Wilhelm's prepared statement, on behalf of the Consumer Bankers Association, follows:]

TESTIMONY OF
THE CONSUMER BANKERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

PRESENTED BY
GREGORY O. WILHELM
OCTOBER 9, 1985

Mr. Chairman, my name is Gregory O. Wilhelm, Vice President and Federal Legislative Counsel of Wells Fargo Bank, NA, San Francisco, California. I am appearing on behalf of the Consumer Bankers Association (CBA). /1 The CBA appreciates the opportunity to appear before this Subcommittee to discuss the issue of funds availability and to comment on H.R. 2443, "The Expedited Funds Availability Act."

At the outset, let us commend the Chairman and the Subcommittee for holding this hearing and seeking input from the industry that is directly affected by the proposal. We note that the Chairman's bill has approximately 150 cosponsors and that action by the Committee is likely. Nonetheless, we do not believe that federal legislation, especially in the form of a mandated availability schedule which addresses only symptoms and not causes, is prudent at this time. We have a number of additional specific concerns with H.R. 2443 and offer this testimony to make you aware of some problems it will create in its present form.

1/ The Association is a nonprofit organization that was organized in 1919 to provide a voice for the retail banking industry. Today, membership in the Association is open to any federally insured depository institution, including commerical banks, thrifts, and credit unions. Associate members include bank card processors and service provider organizations. Combined, the members of the Association now hold over 70% of all consumer credit outstanding held by commercial banks and over 80% of the consumer deposit accounts held by commercial banks.

CBA supports the goals of your legislation. Depositors should be entitled routinely to have the use of deposited funds as rapidly as is possible. They should be informed of funds availability policies. Interest on funds deposited into interest bearing accounts should be credited promptly. We are concerned, that attempts to effect these goals may lose sight of principles that help assure the efficiency and safety and soundness of the payments system, some of which are inherent in the Uniform Commercial Code.

Delayed funds availability is not the result of arbitrary policy making, but rather the result of fundamental flaws in the check collection system that adversely affect both banks and their customers. These flaws stem from the manual system of processing returned checks, as well as technical and legal impediments. They are not easily remedied by waving a legislative wand.

In addition to the operational complexities involved, we ask you to recognize that financial institutions, in increasing numbers, have been voluntarily reviewing, revising and disclosing their funds availability policies to their customers. Furthermore, competition for customers in the financial services industry has encouraged our members to continue to review, revise and disclose their policies to facilitate customer relations.

Our testimony today focuses on the way the payments system works, the reason for holds on deposits, information on actual experience in the area, and CBA's response to H.R. 2443.

We would like first to provide some background on the present check collection system and its impact on the availability of deposited funds.

National Check Collection System

The question of deposit availability must be considered in light of the provisions of the Uniform Commercial Code, adopted by all states, and of the national check clearing system. When one bank takes for deposit a check drawn on another, it must send the check through the national check collection system to obtain the funds the check represents. Checks may be collected through a correspondent bank, the Federal Reserve System (FRB), a local check clearinghouse, or by sending the item directly to the payor bank on which it is drawn. In most cases, some combination of these methods is used.

The forward process of sending a check to the payor bank generally takes one or two business days from the date the check is first deposited. The actual time required will depend on a variety of circumstances, such as the location of the institution, the number of intermediary institutions involved, holidays, weekends, weather, and mechanical breakdowns.

After receiving the check, the payor bank is required by the Uniform Commercial Code either to pay it or to return it unpaid by midnight of the day following the day it receives the check. The depositary bank receives "provisional credit" for the check from the institution to which it delivers the check according to an availability schedule. That schedule reflects normal processing and transportation time for the forward process only, usually one or two business days. Since it is unknown whether the specific check will in fact be paid, any such grant of credit must be provisional and may be revoked if the item is returned unpaid.

Due to the uncertainty of whether it will receive final credit, the depositary bank will be making a loan to the depositor if it allows the depositor to withdraw funds at the same time that the bank receives provisional credit. In this situation, the bank is at risk that the item will be returned unpaid and that the provisional credit will be revoked. If this occurs, the bank may be unable to recover the funds withdrawn by the depositor.

The forward check collection process is relatively fast (usually within a few days), particularly since Magnetic Ink Character Recognition (MICR) encoding allows the use of high speed processing equipment. The return process is manual, however, and therefore considerably slower.

For a returned check, each endorsement stamp on the back of the check must be read to determine to which bank or institution the check must next be returned. Each bank in the return process dispatches a returned check to the next succeeding bank by midnight of the next business day following the day of receipt. Often the institution merely places the check in the mail by the midnight deadline. Accordingly, the return process is considerably longer than the forward process.

Reasons For Delayed Funds Availability

More than ninety-nine percent of all checks are paid upon presentment. It is the less than one percent that is not paid that requires banks to place holds on the proceeds of some items in order to protect themselves. If banks were not permitted to place holds, they would be open to substantial losses from fraud and ordinary credit risk from funds advanced on items subsequently returned. Millions of dollars are lost in "check kiting schemes" each year. The only way a depositary institution can protect itself fully against fraud or credit loss on a particular item is to allow depositors to withdraw only against collected funds. Due to the delay involved in learning of the return, hold times to protect the bank and its customers may be lengthy.

Critics of bank hold policies frequently argue that the relative insignificance of bad check losses as a percentage of total dollars cleared shows that most holds are either unnecessary or too long. Although bad check losses are a very small percentage of the total dollars cleared, the absolute numbers are not small. For example, Wells Fargo calculated that over the last three years we have lost an average of $2.1 million annually on "bad" checks that could have been averted if we had chosen to place funds availability holds when the items were deposited. These losses account for 20-25% of our total annual losses attributable to operations. Though we hold only about .03 percent of the items we process, and have decided that we would rather incur these losses than aggravate our customers with a more aggressive hold policy, they obviously are not insignificant. Our experience is not unique, at least in California.

Moreover, the length of a particular hold is a function of how long it takes the payment system to return a dishonored item to the bank of original deposit. If the hold is released before the bounced item returns, it is a pointless exercise. In short, a hold placed on the availability of funds represented by a particular deposit - perceived as risky - must be sufficiently long enough to afford actual protection.

Most critics largely ignore or discount the deterrent value of hold policies generally. Although there is no empirical evidence on this point of which we are aware, common sense suggests that the check kiters and fraud artists would have increased incentives to engage in illegal activity if holds were never placed or, as would be the case under many legislative proposals, the maximum permissible hold periods were inherently inadequate in certain circumstances. Undoubtedly, bad check losses would be higher in the absence of hold policies.

Another important factor causing banks to place holds is that state and federal regulatory agencies supervising depository institutions have taken the position that allowing depositors to withdraw against uncollected funds is tantamount to extending credit to the depositor. Such credit extensions must be included in determining whether a financial institution is adhering to applicable legal lending limits and in analyzing whether the institution is acting safely and soundly as required by banking laws.

Customer Information

As we have stated, there are compelling reasons for imposing holds on checks. Until fairly recently, however, many depository institutions did a less than satisfactory job of clearly disclosing to their customers that a hold was being placed on a particular deposit. Accordingly, many customers unwittingly wrote checks against unavailable funds. Most banks are now addressing this problem and legislation has been passed in at least five states, including California, requiring extensive disclosure. Moreover, financial trade associations such as CBA have been exhorting their members to disclose their policies voluntarily and the industry is responding.

Another reason for consumer animosity is the fact that the public perception regarding the speed and rapid evolution of EFT and ATM deployment does not square with the archaic reality of the return item system. Again, the industry has begun to explain the problem to their customers.

Funds holds, although a rare occurrence for most customers, nevertheless can create a tremendous inconvenience when they do occur. It is an experience not easily forgotten. When a hold does occur, customers overlook the fact that many deposited checks are not "held" and the systemic reasons for holds are not usually known or appreciated. Therefore, in addition to disclosing hold policies, the industry must continue its efforts to educate the public on the reasons for a delay in funds availability.

The Float

One rationale underlying initiatives to impose legislative and regulatory restrictions on the funds availability policies of banks is the commonly held belief that banks actually place holds on checks in order to extract "float" income at the expense of the customer. The uncontroverted evidence in my home state of California, even prior to the imposition of regulatory restrictions, is clearly to the contrary. If anything, consumers in the aggregate probably enjoy more float income on bounced checks than banks earn on the much smaller number of items which are held.

A survey conducted by the California Superintendent of Banks, prior to the development of his funds availability regulations, showed that the California banking industry on average held only one out of every 2,500 checks. Indeed, for many banks the percentage of items held is even smaller. Wells Fargo Bank, which currently has 330 branches and processes approximately 1.3 million clearing items per day, places an average of 240 holds per day representing $2.2 million -- less than one hold per branch per day with the average item size over $9,000 ($2.2 million divided by 240). I have had several smaller California banks tell me that their hold percentages are even lower. The Houston Clearing House Association conducted a survey of its members in 1984 and found that only .1 of 1% of their items were being held.

Obviously, with so few holds being placed, float income could not be the reason most banks delay availability. The recent 95-page report prepared by the

California Department of Consumer Affairs (Report on the New Funds Availability Rules on the Deposit of Checks in California - March 15, 1985) observes,

> "In the case of most California banks, it appears that unnecessarily delaying the availability of funds has not been a source of profit. Most California banks place holds on only a very small percentage of checks, and this is done selectively where the circumstances indicate that there is a risk of loss to the bank. . . "
>
> "As in the past, it can be expected that depositary institutions that are responsible and competitive will exercise 'common sense' when placing holds on checks -- that is, will adopt and intelligently implement selective hold policies and will avoid blanket hold policies altogether."

This report was prepared without the knowledge or participation of the banking industry by the state agency charged with the responsibility of protecting the California consumer's interests. It is a balanced, informed study which in some ways makes our case better than we ourselves can make it.

H.R. 2443 - "The Expedited Funds Availability Act"

CBA believes that H.R. 2443 contains provisions that address the consequences of the structural flaw in the check collection system. Clearly the most welcome provision of H.R. 2443 is found in Section 3 where the Board of Governors of the Federal Reserve System is required to develop a system to reduce return item risk so that funds would be available for withdrawal at a specified time. With its nationwide pickup and delivery system, the FRB, with the strong cooperation of the industry, is in an excellent position to expedite the return item process.

Today, the only "confirmation" that the bank of deposit receives that an item has, in fact, been paid is when it does not return. This lack of specific payment confirmation is compounded by inadequate legal incentives in the Uniform Commercial Codes of some states to return dishonored items directly to the bank of deposit. Also, the uncoordinated development of return item processing technology is an obstacle. Thus, a bank wishing to protect itself against the risk of dishonor on a particular item must calculate the number of days that, based upon its experience with similar items, it will take to present the item to the payor bank and for the item to be returned via mail, or otherwise, through the same chain of correspondents, clearing houses and the Federal Reserve System which were used for initial presentment. The depository bank is not reasonably insulated from liability until enough time has passed that it becomes likely that the item will never return.

With regard to the bill's specific goals (i.e. next-day availability on "local" items and availability no later than opening of business on fourth day following deposit on all other items), we doubt they can be achieved with existing technology as long as paper checks must be transported to the payor institution for presentment. Today, even using high-speed MICR encoding and sorting equipment, as well as couriers, jet planes and helicopters for delivery, it can take up to two days (on rare occasions three days) for Wells Fargo to present certain checks for payment. Many rural banks need at least one more day for presentment since it takes additional time to place their items into the high-speed transportation network. The payor bank has until midnight of the day following presentment to dishonor the item and return it (or provide a notice that it will be returned) to the forwarding bank or the bank of original deposit. Even assuming virtually instantaneous notification of dishonor (i.e., wire or telephone) and someone available to receive and process the information (since most payment decisions are made after normal business hours), time must be allowed to forward the information to the appropriate branch before the opening of business on the fourth day so that the hold is not released. As you can see, a hold that is a day too short is worthless. For a significant number of non-metropolitan banks, a mandated maximum three business day hold would be too short, even without considering the difficulties of achieving virtually instantaneous notification for return items through a technological revamping of the current system. Thus, although we support the general thrust of Section 3, we believe that its specific goals must be modified if they are to be realistic. A target of "least delay reasonably possible" is preferable to specific availability dates set in statutory concrete.

Moreover, direct notification by payors to the bank of original deposit (which Section 3(b) of the bill instructs the Fed to consider as a means of achieving the overall goal) is clearly not cost-justified at the $250 threshold set forth in the bill. Wells Fargo analyzed this feature when it was first suggested in Senator Dodd's "Fair Deposit Availability Act of 1983" and found it to be a very expensive solution. Using a ten-day sample, we found a daily average of approximately 2,400 checks over $250 drawn on Wells Fargo which we returned to the depositing bank. There were approximately 1,600 checks each day over $250 which were drawn on other banks, deposited with us, and returned to us. Assuming that each outgoing item required a three minute phone call (to the bank of deposit) and each incoming item required two three minute calls (one from the payor to Wells Fargo Bank and one from our operations center to the appropriate Wells Fargo branch), we concluded that we would have to hire 35 full time employees at an annual cost of $1.5 million simply to handle the direct notices.

This is not to say that mandatory universal direct notification should not be considered at, for instance, the $2,500 threshold required by the FRB's Regulation J today for items presented for payment through the FRB. Although this notification level represents only 2% of the return items, by the FRB's calculations it represents almost 50% of the return dollars. Notification under Regulation J, is however, expensive. The FRB charges between $2.25 and $4.25 for this service and the cost will most likely be borne by the consumer.

We also agree that the FRB should implement some of the other proposals mentioned in the bill, such as cost-effective uniform endorsement standards applicable to all participants in the payments system including Federal Reserve Banks, permissive direct item returns and the availability of the FRB clearing system for all returns regardless of the method of presentment. Also worthy of very serious examination is the proposal under consideration by various industry study groups and the FRB which would use existing MICR encoding equipment to reincode return items so that they could travel in the same high-speed transport stream as presentment items.

Availability Schedules. Section 4 of H.R. 2443 sets forth the maximum hold periods which would apply to various classes of checks until the FRB develops the new system required by Section 3. Setting federally mandated availability schedules that are fair to both consumers and financial institutions is a formidable if not impossible task. In both New York and California, the authority to determine schedules was delegated to the state banking agencies. The regulations were issued after the respective agencies met with consumer and financial institution representatives. During the meetings, it became clear that within those states, the concerns of large urban banks were not the same as those of small rural banks. The concerns of their respective customers were also not necessarily the same. Availability schedules appropriate for densely populated urban states with many clearing facilities will probably not work in less populous states. Given the extreme complexity of the payments system in terms of institutions, geography, technology and competitive relationships, we submit that Congress should not attempt to legislate an inflexible hold schedule. The effect would be to mandate that banks make unsecured and potentially uncollectable loans to any customer who wants one. If Congress feels compelled to require specific limits beyond the "reasonableness" standard in the Uniform Commercial Code, we ask that you follow the lead of New York and California and delegate this technical responsibility to one regulator that best understands how the system works and is most capable of responding quickly to any problems. The wisdom of such a delegation was recently validated in California. Six months after the California regulations became effective, the Banking Department held hearings and has proposed changes to make the regulations more effective, efficient, and fair. Obviously, an understanding of the payments system as well as flexibility and the ability to respond quickly are absolute prerequisites for any agency given the authority to set schedules.

State and Local Government Checks. Section 4(a)(1)(C) provides for one day availability for items drawn on the U.S. Treasury or any state, county, city, town, village, or municipality located in the United States. A similar provision in the New York State regulations requires that New York State government checks be deposited at an attended teller station and be identified as such on a separate deposit ticket in order to receive one day availability. Absent such a requirement in the federal statute, depository institutions may not be able to identify such items in time to grant expedited availability, since, unlike U.S Treasury checks, such items cannot be readily identified from the MICR line of the item. In addition, it seems reasonable to restrict expedited availability to items of governments located in the same state where the depository institution is located, since the collectability of all such items is by no means guaranteed.

Certified and Cashier's Checks. Section 4(a)(1)(D) provides for one day availability for deposits of cashier's or certified checks in unlimited amounts, commencing two years after the date of enactment. Cashier's and certified checks are similar to state and local government checks in that they are frequently difficult to identify. These deposits should also be subject to rules requiring that they be identified on a separate deposit ticket. In addition, due to the risk of fraud, we do not believe that cashier's and certified checks of unlimited amounts should be given one-day availability, particularly when the deposit is to a new account, as provided in Section 5(b).

"Local" Checks. Section 4(a)(2) of the bill provides that not more than three business days shall intervene between the day of deposit and the day on which funds are available for withdrawal for checks drawn on a "local" depository institution. "Local depository institution" is defined to mean a depository institution which has an office in the same city, town, village, local region, or metropolitan area in which the office of the receiving depository institution is located.

Although common sense would seem to suggest that a rule based on the "local" proximity of a branch of the payor and a branch of the depository bank should be easy to administer, the experience in California has proven this concept to be largely unworkable. The offices of the two banks may be across the street from each other but their respective operations centers and/or correspondents may be hundreds of miles apart. For reasons of efficiency and processing speed, banks deal with large volumes of checks which are presented to, or received from, a relatively small number of sources (i.e., correspondents, clearing houses and the FRB). It is not cost effective to have bilateral check clearing arrangements with every financial institution located in the same town where each branch is located. Moreover, since check processing is usually performed at an operations center in another location remote from the branch office, this provision would "require" the availability of funds for an item before it has been processed .

Initially, the California Banking Department proposed a "local" hold category that was substantially modified before the final regulations were adopted. Regulations which eventually became effective last October replaced the "local" concept with a rule permitting a maximum two-day hold on any item deposited in a receiving bank office located in the same city as the headquarters of the payor bank. This "headquartered bank" rule proved to be inherently difficult to explain to bank personnel and customers. It provided insufficient protection to the banks in a large percentage of cases and it produced some rather quirky results.

In an effort to maximize the number of items which would be subject to the short two-day hold rule, while offering greater protection to the bank when a hold is actually placed, the Banking Department is now proposing to replace the "headquartered bank" rule with a rule that permits a maximum two-day hold on any item drawn on any bank whose Federal Reserve Routing symbol is 1210 (i.e., San Francisco) and deposited into a deposit account maintained at any other 1210 bank -- regardless of the proximity of the branch of deposit to the payor branch where the writer of the check maintained his account.

The same rule would apply where the two banks involved are both 1220 banks (i.e., Los Angeles).

In-State Checks. Section 4(a)(3) of the bill provides that not more than four business days shall intervene between the day of deposit and the day funds are available for withdrawal in the case of a check drawn on an "in-state depository institution."

In-state institutions are deemed to include any depository institution which is not "local" and which has "an office in the same state in which the office of the receiving depository institution is located." Unfortunately, most of the major money center banks have "offices" in more than one state, albeit not retail deposit-gathering facilities. It would be unrealistic for these banks to be deemed "in-state" for purposes of applying the appropriate maximum hold period since checks drawn on them must be presented for payment in New York, Chicago, etc.

Out-of-State Checks. Section 4(a)(4) of the bill provides that not more than eight business days shall intervene between the day of deposit and the day funds are available for withdrawal for items drawn on an "out-of-state depository institution." This is essentially the rule today for items deposited with California 1210 (San Francisco) and 1220 (Los Angeles) banks which are drawn on out-of-state banks. There is additional flexibility in California as an extra day is permitted for items drawn on out-of-state thrifts since experience shows that these items take longer to be presented and returned. Further, California "country banks" are permitted to place ten-day holds on out-of-state thrift items -- again recognizing that their geographic position for the most part disadvantages them vis a vis the major city banks in the payment system.

Cash Deposits. Section 4(d) of the bill would require same-day availability of cash deposits. Provisions in the Uniform Commercial Codes of virtually all states provide for availability as a matter of right at the opening of the bank's next banking day following receipt of the deposit. A bank needs to verify the deposit, post the entry and update the customer's file. Very few institutions are prepared to do this on-line nor would they necessarily want to give tellers the ability to effect final entries to a customer's account. Moreover, the potential for fraud in a multi-branch system would be quite high if the proposed rule were law. It is not asking too much of customers to hold back sufficient funds from such a cash deposit to meet their needs for the remainder of the day.

There are other technical problems created by the provisions of Section 4 and the definitions contained in Section 14. CBA would welcome the opportunity to provide additional comments.

Section 5. The bill also sets forth exceptions to the maximum hold restrictions. The exceptions for repeated overdrafts and foreign checks are the same as in California. California's exception for new accounts is good for 60 days after the account is opened whereas the bill would only except checks deposited during the first 30 days following the opening of the account. Thirty days is clearly insufficient time to develop meaningful experience regarding a customer's handling of an account. Indeed, many California banks feel that the 60 days provided in our law is inadequate.

The bill further provides that the hold period restrictions do not apply to deposits of checks aggregating more than $5,000 in any account on any business day. This limit is too high and could expose institutions to undue risk of loss to check kiters. A lower limit should be adopted at the outset (New York and California Regulations contain a $2500 limit).

The California rules also provide certain additional exceptions to the hold period restrictions which should be examined carefully for inclusion in the federal bill. Specifically, exceptions are provided in California when (i) the depository bank actually has received notice that an item has been or will be dishonored; (ii) there is a reasonable belief that the drawer or drawee is insolvent or that a situation involving fraud or kiting exists; and (iii) the item is subject to processing delay, such as improper encoding, mutilation, use of a counter check and presentment delays (i.e., bad weather, etc.).

Effect on State Law. Section 6 of the bill permits the states to impose shorter time periods. This creates the potential for vastly unequal treatment since the bank of deposit has no ability to control its risk on out-of-state items. Moreover, the bill is silent as to the effect of a comprehensive federal disclosure scheme on existing state schemes.

It is impossible to contemplate a national payments system subjected to a patchwork of overlapping state and federal rules on the same subject. It can only create chaos in the system. At present, at least five states have enacted varying types of legislation. If you believe that it is necessary to federally mandate availability times, we suggest that it would be proper for Congress to totally pre-empt state law in this area.

Payment of Interest. Section 7 of the bill requires interest to be credited commencing with the day of deposit. California law requires that a depository institution shall not delay the computation of such interest beyond the date on which the institution receives provisional credit for the check. This is the date on which the bank has good funds to invest.

The customer should be entitled to receive interest commencing on the same date that the bank has good funds from the deposit, which is usually 1 to 2 days after the deposit is made. If a bank chooses to credit interest earlier, that should be a business decision of the institution.

Disclosure of Funds Availability Policies. Section 8 of H.R. 2443 provides for disclosure of funds availability policies. As we have stated, institutions have increasingly responded to the public's concern and are voluntarily providing disclosures. CBA believes that until the technical problems associated with the return system are solved, disclosure is the only interim solution. Though we believe that the industry is acting responsibly, we would like to provide suggestions to the Committee on this particular section of the legislation.

Civil Liabiltiy. CBA objects strongly to the civil liability provisions in Section 13 of the bill. Banks and other depositories will be exposed to hypertechnical lawsuits over every aspect of their compliance with the availability groundrules, in a manner reminiscent of the Truth-in-Lending litigation explosion in the 1970's. We believe our testimony and that of other industry witnesses reflects our deep desire to solve the funds availability problem at its roots, once and for all. It is unfair, in this context, to burden the industry with a liability structure of unknown but potentially vast dimensions.

If civil liability rules must remain in the bill, we urge that they be limited to violations of the disclosure rules in Section 8. These requirements are ones the industry, guided by FRB model forms, can comply with reasonably. There are already adequate legal remedies for consumers whose funds are improperly withheld, in the "wrongful dishonor" provisions of the Uniform Commercial Code and the Electronic Fund Transfer Act. There is no need or justification for subjecting banks to additional layers of actual and statutory damages, and to the specter of class actions.

CBA Recommendations

As previously mentioned, the CBA generally supports the Subcommittee's consideration of the consequences of the structural flaws in the check collection system.

We believe that there are several avenues that the Subcommittee might fruitfully explore in order to address the basic flaws in the check collection system that we described earlier in this testimony.

First, we support the mandate that the Federal Reserve System should develop a system to automate the flow of return items, just as the forward check collection process is now automated, so that the depositor and the depository bank will know as quickly as possible if a check is not paid. Automated return item processing would remove much of the uncertainty from the system and reduce the need to delay availability on deposits. We also support the development of a cost-effective endorsement standard applicable to all participants in the payments system including the Federal Reserve Banks to ensure the reliability of the return system.

Second, we also support the concept of crediting interest to an interest-bearing deposit account no later than the date on which the depository institution receives provisional credit for the deposit. Most CBA member institutions have already begun computing interest either on the date of deposit or when provisional credit has been received.

Third, we endorse the concept that financial institutions should provide initial disclosures of their policies regarding funds availability. We have already urged our members on several occasions to make this type of information available to customers in writing or by branch notices. In order to avoid many of the problems depository institutions experienced with the design of the Truth-In-Lending disclosures, we would be happy to provide suggestions to the Subcommittee on this particular section of the legislation.

Fourth, Congress should explore the need for preemption of state laws in order to ensure uniformity within the payment system. For example, the Uniform Commercial Code provisions in some states, that prohibit direct return, would impede an efficient return system and should be preempted.

We are, however, strongly opposed to the rigid availability schedules, notification, and civil liability requirements that have been proposed. Strict return item schedules and civil liability standards do little to address the basic flaws in the check collection system. In fact, such requirements would tend to require an even more labor-intensive and costly effort than the present system, in direct conflict with the concept of devising a more efficient system based on present and future electronic technology.

CBA would be glad to work with the Subcommittee to develop ways to deal cost-effectively with return item handling in the present check collection system. We all agree that the system requires creative innovations to continue to serve depository institutions and their customers well in the future.

Chairman **St Germain**. Thank you, Mr. Wilhelm. We also thank you for your observations and recommendations, in addition to those of the other two witnesses who already testified.

That is what this hearing is all about. We are looking for your constructive criticism and assistance.

Chairman **St Germain**. Now I am more than pleased to welcome, and it was a big surprise when I heard yesterday that he was coming in to testify, from the great State of Rhode Island, the fabulous city of Pawtucket, Senator Gannon. He is in great part responsible for the delayed funds availability legislation that was adopted in the State of Rhode Island—also a progressive State, not only California or New York. Rhode Island is there, too.

In fact, we have, I think, legislation that California might want to take a look at, Mr. Wilhelm, to see if things couldn't be improved in California. We are proud, too. We are small, but we have quality.

It is really a pleasure to welcome you, Senator, to this distinguished panel. You notice all of the members are here, because they knew you were going to be here and they wanted to hear you.

Senator Gannon.

STATEMENT OF HON. LEO GANNON, RHODE ISLAND STATE SENATOR, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. **Gannon**. Thank you, Mr. Chairman. Good morning, and it is certainly a pleasure for me to be here and I certainly appreciate those warm and kind remarks you made concerning the State of Rhode Island and my short term in the legislature.

I would like to make a couple of comments before I begin with my planned statement. That is, as legislators, I am sure we—as I listened this morning, I hear people say in passing on commendations for such fine work, and I laud all of you for the work you have put in this particular piece of legislation, but as a lawmaker and policymaker, I, too, have in many cases been very frustrated by comments that people make in terms of commendations we receive and yet no action is taken.

For too long, Mr. Chairman, and you cited clearly earlier during the testimony that, how long do we wait? How long do consumers wait for action to be taken?

We seem to always be looking at the issues and never doing anything with them.

I think, Mr. Chairman, your legislation certainly, sponsored by so many of the members here today, as well as my legislation at the State level, would do something for consumers.

I appear before you today as a representative of the National Conference of State Legislatures and its committee on government operations and regulation, which has jurisdiction over financial institutions issues. I appear also as a lawmaker who has sponsored and passed legislation expediting funds availability for Rhode Island consumers.

I appreciate this opportunity to share with your NCSL's concerns regarding financial institutions' funds availability policies and the excessive and unjustified delays imposed upon consumers in withdrawing funds which they deposit. Rhode Island is one of a handful of States which has had to enact legislation expediting the availability of funds.

I underscore "had to enact" because I, just like so many other State and Federal lawmakers, have waited, all too patiently, for the industry and regulators to contain consumer frustration generated by frequently incredulous check hold policies.

A 1984 study done by Massachusetts Commissioner of Banks found that "in more than a few instances, individual bank hold policies were both illogical and in sharp contrast to normal expected bank practice."

NCSL does not come before you today to support elimination of these hold policies. The organization and I, however, seeks Federal legislation to uniformly curb essentially unwarranted excesses applied to both new and long-term account holders and restrict what is an unnecessary inconvenience and nuisance for depositors.

I am sure we all have heard of the atrocities, the conditions prevailing in some instances, and as an example that I might share with you, I find it also incredulous that people have taken other alternatives in terms of not depositing checks, for example.

They go to a teller and ask to have the money in cash and then go back in line and deposit the cash, because they know full well that that cash will be credited to their account that day.

These are the types of things, examples of some of the actions that people are now taking. It is a sad state of affairs when they have to resort to that type of action.

I agree with your statement, Mr. Chairman, made on May 8, 1985, when introducing the "Expedited Funds Availability Act" that delayed access to funds results in "a frustrating experience, and at times an experience that results in severe problems for consumers, particularly low and middle-income families who do not have the luxury of waiting weeks for their money."

That frustration alone, exhibited through voluminous complaints which I and fellow State legislators have received, moved me to push legislation in 1985 which ultimately resulted in reasonable check hold and disclosure statutes for Rhode Island.

The statute has been enacted but is not effective as yet, in terms of its mission. It takes effect in January of 1986, but I would like to also add that the banking industry in Rhode Island and the institutions were very helpful with us in terms of formulating a policy which they could live with.

We hit this morning reasons why we could not enact legislation. Certainly, if Rhode Island, being a State in an urban area, that sometimes faces the same frustrations as States, for example, in a rural community, and in some cases some of the rural communities have their checks deposited more expeditiously than in our State at times.

This issue is an emerging one within State legislatures despite the fact that check hold policies certainly predate deregulation which has triggered other consumer concerns. Deregulation appears to have made consumers much more aware of bank practices because fees have increased, information on account options has been deficient and access to accounts problematic for some.

I believe that the call for greater sensitivity to consumers' concerns is one that the industry, regulators, and policymakers must heed. Therefore, H.R. 2443 and legislation which States have enacted addresses a critical public need.

I will summarize some of our recommendations relative to your piece of legislation. I would like to refer to the exceptions in your legislation, Mr. Chairman, which rightfully suggest that deposits over a particular value threshold, establishment of new accounts, experience with repeated overdrafts, foreign checks, and emergency conditions be treated as exceptions.

Flexibility must be reserved for financial institutions to handle special cases. NCSL would suggest, however, the following modifications and additions:

That items individually or in the aggregate exceeding $2,500 be subjected either to written bank policy time limits or held until the item or items clear on a collection basis; New York, Massachusetts, and Rhode Island utilize this threshold. I feel that State decisions for utilizing $2,500 threshold were prudent and sensitive to prior problems with fraudulent and bad checks.

Also, we recommend that a customer and a financial institution may mutually agree, in writing, to an extended hold period, provided that it is not a typical or usual business practice.

That financial institutions be permitted to extend hold periods, whenever they doubt collectibility, through written policy or by imposing a collection basis proviso.

Massachusetts has such a regulation which calls on financial institutions only to use this exception "in good faith." New York has similar regulatory language. Check kiting and other fraudulent schemes pose serious problems for banks, thrifts, and credit unions.

Existing check hold policies have not worked well to curb these schemes since there is a limited relationship between limiting funds availability and fraud.

Nonetheless, to the extent that limiting funds availability might temper or discourage check kiting, then a legislative or regulatory directive permitting some flexibility for check hold ceilings seems reasonable.

I would suggest, as Oregon has done, that notice of modifications to existing policies be made to all account holders a set number of days—Oregon stipulates 30 days—prior to the effective date of the proposed modifications. H.R. 2443 addresses this matter after the fact rather than before it.

The issue of disclosure, Mr. Chairman, is not limited to check hold policies as many State legislatures have already witnessed. It relates to the need for information regarding account options, service fees, and interest rates.

Disclosure, as States have already realized and as exemplified by various bills which many members of this subcommittee have introduced, is only one of a host of issues which requires State legislative and congressional attention.

NCSL encourages you, Mr. Chairman, to hold hearings on other matters being raised by consumers which would enhance access to and services rendered by the Nation's financial institutions.

Mr. Chairman, I want to thank your extending this opportunity to NCSL to participate in these hearings, and I will gladly respond to any questions which you and other members of the committee might have.

Thank you.

[The prepared statement of Mr. Gannon, with attached charts of State Check Hold/Funds Availability Policies, follows:]

STATEMENT BY SENATOR LEO GANNON, RHODE ISLAND STATE SENATE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

I AM STATE SENATOR LEO GANNON, CHAIRMAN OF THE RHODE ISLAND LEGISLATURE'S JOINT COMMITTEE ON SMALL BUSINESS. I APPEAR BEFORE YOU TODAY AS A REPRESENTATIVE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND ITS COMMITTEE ON GOVERNMENT OPERATIONS AND REGULATION WHICH HAS JURISDICTION OVER FINANCIAL INSTITUTIONS ISSUES. I APPEAR ALSO AS A LAWMAKER WHO HAS SPONSORED AND PASSED LEGISLATION EXPEDITING FUNDS AVAILABILITY FOR RHODE ISLAND CONSUMERS.

THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL) IS THE OFFICIAL REPRESENTATIVE OF THE NATION'S 7,461 STATE LAWMAKERS. THE ORGANIZATION PROVIDES BASIC ISSUE RESEARCH, TECHNICAL ASSISTANCE, COMPREHENSIVE FEDERAL BUDGET AND FUNDING DATE AND TRAINING SERVICES FOR LEGISLATORS AND THEIR STAFFS. SINCE ITS CREATION IN 1975, THE ORGANIZATION HAS ALSO SERVED AS THE WASHINGTON, D.C. LIAISON FOR ALL STATE LEGISLATURES AND HAS PROMOTED POLICIES DEVELOPED THROUGH A STATE-FEDERAL ASSEMBLY.

I APPRECIATE THIS OPPORTUNITY TO SHARE WITH YOU NCSL'S CONCERNS REGARDING FINANCIAL INSTITUTIONS' FUNDS AVAILABILITY POLICIES AND THE EXCESSIVE AND UNJUSTIFIED DELAYS IMPOSED UPON CONSUMERS IN WITHDRAWING FUNDS WHICH THEY DEPOSIT. RHODE ISLAND IS ONE OF A HANDFUL OF STATES WHICH HAS HAD TO ENACT LEGISLATION EXPEDITING THE AVAILABILITY OF FUNDS.

I UNDERSCORE "HAD TO ENACT" BECAUSE I, JUST LIKE SO MANY OTHER STATE AND FEDERAL LAWMAKERS, HAVE WAITED, ALL TOO PATIENTLY, FOR THE INDUSTRY AND REGULATORS TO CONTAIN CONSUMER FRUSTRATION GENERATED BY FREQUENTLY INCREDULOUS CHECK HOLD POLICIES. A 1984 STUDY DONE BY MASSACHUSETTS' COMMISSIONER OF BANKS FOUND THAT "IN MORE THAN A FEW INSTANCES, INDIVIDUAL BANK HOLD POLICIES WERE BOTH ILLOGICAL AND IN SHARP CONTRAST TO NORMAL EXPECTED BANK PRACTICE". NCSL

DOES NOT COME BEFORE YOU TODAY TO SUPPORT ELIMINATION OF THESE HOLD POLICIES. THE ORGANIZATION, HOWEVER, SEEKS FEDERAL LEGISLATION TO UNIFORMLY CURB ESSENTIALLY UNWARRANTED EXCESSES APPLIED TO BOTH NEW AND LONG-TERM ACCOUNT HOLDERS AND RESTRICT WHAT IS AN UNNECESSARY INCONVENIENCE AND NUISANCE FOR DEPOSITORS.

I AGREE WITH THE STATEMENT WHICH YOU, MR. CHAIRMAN, MADE ON MAY 8, 1985 WHEN INTRODUCING THE "EXPEDITED FUNDS AVAILABILITY ACT" THAT DELAYED ACCESS TO FUNDS RESULTS IN "...A FRUSTRATING EXPERIENCE, AND AT TIMES AN EXPERIENCE THAT RESULTS IN SEVERE PROBLEMS FOR CONSUMERS, PARTICULARLY LOW AND MIDDLE-INCOME FAMILIES WHO DO NOT HAVE THE LUXURY OF WAITING WEEKS FOR THEIR MONEY". THAT FRUSTRATION ALONE, EXHIBITED THROUGH VOLUMINOUS COMPLAINTS WHICH I AND FELLOW STATE LEGISLATORS HAVE RECEIVED, MOVED ME TO PUSH LEGISLATION IN 1985 WHICH ULTIMATELY RESULTED IN REASONABLE CHECK HOLD AND DISCLOSURE STATUTES FOR RHODE ISLAND.

THIS ISSUE IS AN EMERGING ONE WITHIN STATE LEGISLATURES DESPITE THE FACT THAT CHECK HOLD POLICIES CERTAINLY PREDATE DEREGULATION WHICH HAS TRIGGERED OTHER CONSUMER CONCERNS. DEREGULATION APPEARS TO HAVE MADE CONSUMERS MUCH MORE AWARE OF BANK PRACTICES BECAUSE FEES HAVE INCREASED, INFORMATION ON ACCOUNT OPTIONS HAS BEEN DEFICIENT AND ACCESS TO ACCOUNTS PROBLEMATIC FOR SOME. I BELIEVE THAT THE CALL FOR GREATER SENSITIVITY TO CONSUMERS CONCERNS IS ONE THAT THE INDUSTRY, REGULATORS AND POLICYMAKERS MUST HEED. THEREFORE, HR 2443 AND LEGISLATION WHICH STATES HAVE ENACTED ADDRESSES A CRITICAL PUBLIC NEED.

AS AN EMERGING ISSUE, I CAN REPORT TO YOU THAT AT LEAST SIX STATES HAVE ENACTED CHECK HOLD FUNDS AVAILABILITY LEGISLATION. MASSACHUSETTS, NEW YORK, RHODE ISLAND, CONNECTICUT, CALIFORNIA AND OREGON HAVE ENACTED LAWS WHICH EITHER SET DEFINITIVE TIME LIMITS ON FUNDS AVAILABILITY, CALL UPON STATE REGULATORS TO ESTABLISH THE SAME AND/OR ESTABLISH DISCLOSURE GUIDELINES CONNECTICUT HAS LEGISLATED TWICE - FIRST IN 1984 TO ESTABLISH DISCLOSURE GUIDELINES AND SECONDLY, IN 1985 TO SET SPECIFIC TIME LIMITS ON FUNDS AVAILABILITY. OVER A DOZEN OTHER STATES HAVE DELIBERATED ON RELATED CONSUMER CONCERNS INDICATING THAT STATES ARE LEADING THE WAY IN ADDRESSING THESE ISSUES.

WHILE A SIX STATE COUNT IS NOT EARTH-SHATTERING, I AM CONFIDENT THAT OTHER STATES ARE LIKELY TO CONSIDER AND PASS LAWS IN 1986 AND THE NEAR FUTURE. THE PROBLEMS RELATED TO FUNDS AVAILABILITY ARE NOT LIMITED TO THESE AFOREMENTIONED STATES. IF THEY WERE, I AM CERTAIN THAT NCSL WOULD NOT HAVE UNANIMOUSLY ADOPTED ITS FUNDS AVAILABILITY POLICY AT ITS RECENT ANNUAL MEETING. INTERESTINGLY, THE IMPETUS FOR ADOPTING POLICY CAME FROM STATES YET TO ENACT LEGISLATION.

NCSL URGES THIS SUBCOMMITTEE AND THE FULL BANKING COMMITTEE TO FAVORABLY REPORT HR 2443 TO THE FLOOR FOR THE FULL HOUSE'S CONSIDERATION. WHILE NCSL DOES HAVE SUGGESTIONS WHICH IT FEELS WOULD STRENGTHEN THE PROPOSAL, THE TENOR OF YOUR LEGISLATION STRIKES AT THE HEART OF THE EXISTING PROBLEM.

CHECK HOLD PERIODS

A 1985 SURVEY COMPLETED BY THE CONNECTICUT DEPARTMENT OF BANKING CONCLUDED THAT "...HOLDS ARE PLACED ONLY ON DEPOSITED ITEMS WHICH ARE UNUSUALLY LARGE, WHICH ARE DRAWN ON AN UNKNOWN SOURCE, OR WHICH ARE DEPOSITED TO A NEW ACCOUNT". TO THE CASUAL OBSERVOR, THAT WOULD SEEM ACCURATE. MY EXPERIENCE, LIKE THAT OF SOME OF MY CONNECTICUT COLLEAGUES, INDICATES THAT HOLDS ARE ARBITRARILY APPLIED

TO OLD AND NEW CUSTOMERS, TO SOLID AND SUSPICIOUS CHECK PRESENTORS, TO THE WOMAN HAVING AN 8 DAY HOLD PLACED ON HER FEDERAL TAX RETURN OR TO A 12-YEAR CUSTOMER WHO DIRECT DEPOSITS A LOCAL GOVERNMENT PAYROLL CHECK. WHILE THERE ARE JUSTIFIABLE REASONS TO RESTRICT ACCESS TO SOME DEPOSITED FUNDS, SAY WITH NEW ACCOUNTS OR KNOW BAD CHECK WRITERS, THERE IS NO RATIONALE FOR INCLUDING LEGITIMATE CUSTOMERS UNDER AN "UMBRELLA OF SUSPICION" FOR EXCESSIVE PERIODS OF TIME.

STATE LEGISLATORS ARE CONCERNED THAT CHECK HOLD PERIODS CAN EXTEND FOR UP TO TWO AND THREE WEEKS. THAT WAS THE FUNDING IN EVERY STATE WHICH HAS ENACTED LEGISLATION TO DATE. IN OREGON, CONSUMERS FOUND THAT "EVEN DIFFERENT BRANCHES OF THE SAME BANK REPORTED TIMES (0-21 DAYS) THAT VARIED GREATLY". THE HOLD PERIODS CAN AND DO EXCEED THE TYPICAL TIME IT TAKES FOR BANKS TO BE PROVISIONALLY CREDITED WITH FUNDS. CERTAINLY, MANY FINANCIAL INSTITUTIONS MAKE FUNDS AVAILABLE EVEN BEFORE A CHECK HOLD PERIOD EXHAUSTS ITSELF. IN DOING SO, HOWEVER, THE CONSUMER IS MERELY LEFT KNOWING ONLY OF A TIME PERIOD BEFORE WHICH HE CAN ACCESS HIS DEPOSITED FUNDS, IF HE KNOWS AT ALL.

ARGUMENTS HAVE BEEN RAISED THAT PLACING ABBREVIATED TIME LIMITS BEFORE FUNDS CAN BE MADE AVAILABLE MIGHT RESULT IN GREATER CHECK LOSSES. IN MASSACHUSETTS, RESEARCH COMPLETED BY THE STATE BANKING COMMISSIONER PRODUCED SALIENT FINDINGS REGARDING THE RELATIONSHIP BETWEEN CHECK HOLDS AND LOSSES FROM PAYMENTS MADE ON BAD CHECKS. A MAJOR FINDING INDICATED THAT "THERE IS NO CORRELATION BETWEEN A BANK'S HOLD POLICY AND THE ACTUAL DOLLAR LOSSES EXPERIENCED BY A BANK". THIS CONCLUSION BEARS OUT MY GENERAL FEELING THAT INORDINATE CHECK HOLDS ARE AN ALL TOO COMMON INCONVENIENCE. THEY PROVIDE ONLY MARGINAL ASSURANCE AGAINST ANY CHECK LOSSES. A NEW YORK STATE SURVEY OF 185 financial institutions completed after that state had three months experience with new regulations reinforces my point because it concluded that: "...our regulation has not had significant adverse affects on the banking industry".

Arguments also abound that delayed availability is essential to ensure collectibility. Delayed availability bears little relationship to correspondent relationship or geographic location. Provisional credit is typically received very expeditiously regardless of location. Because of this procedure, I continue to be amazed by some large urban banks clearing directly through the Federal Reserve Banks in Boston showing lengthy check holds while smaller, rural banks clearing through a correspondent grant immediate credit to despositors.

Five states which have set time limit ceilings for funds availability either by statute (Rhode Island and Connecticut) or by regulation (California, Massachusetts and New York) have used ranges which do not exceed 10 days. Rhode Island permits items drawn on a local depository institution to be subject to a 1-2 day ceiling while items drawn on institutions outside Federal Reserve Districts 1 and 2 are subject to a 8-day ceiling. Please refer to Chart I for examples of state-mandated ceilings.

HR 2443 appears to quite closely parallel decisions made by states on the length of time that should pass before funds can be made available for withdrawal. NCSL essentially concurs with the maximum number of business days you establish in Section 4 that should intervene temporarily between deposit and availability for instruments drawn on local, in-state and out-of-state depository institutions. Likewise, Section 4 of HR 2443 also places one day maximum holds on U.S. Treasury, state and local government and cashier's checks

(THE LATTER IN TWO YEARS). THESE INSTRUMENTS DO NOT JUSTIFY LENGTHIER HOLD PERIODS. MASSACHUSETTS, RHODE ISLAND, AND NEW YORK STATUTES AND/OR REGULATIONS APPEAR TO AGREE WITH THIS (SEE CHART 2).

HR 2443 STIPULATES (IN SECTION 3) THAT THE FEDERAL RESERVE BOARD SHOULD DEVELOP MAXIMUM TIME LIMIT PERIODS OF 1-3 DAYS WITHIN 5 YEARS AFTER DATE OF ENACTMENT. NCSL CONSIDERS THIS A WORTHY TARGET BUT WOULD SUGGEST THAT REDUCTION OF CHECK HOLDS OCCUR INCREMENTALLY. NCSL PROPOSES THAT THE FEDERAL RESERVE BOARD ANNUALLY REPORT TO CONGRESS ON COMPLIANCE WITH FEDERAL LAW AND ON MARKETPLACE ACHIEVEMENTS WHICH WOULD SUGGEST THE NEED FOR EITHER A REGULATORY - SANCTIONED OR CONGRESSIONALLY-INITIATED REDUCTION ON TIME LIMIT PERIODS. THE RESULTS OF EFFORTS LIKE THE FEDERAL RESERVE'S DALLAS PROJECT AND STATE EXPERIENCE WITH POTENTIALLY MORE RESTRICTIVE HOLD PERIODS COULD THEN BE ASSESSED FOR THEIR ABILITY TO DIRECTLY OR INDIRECTLY AFFECT FURTHER REDUCTIONS ON A NATIONWIDE BASIS. IT IS ALSO CRITICAL THAT YOUR LEGISLATION ADVOCATE CONTINUED IMPROVEMENTS IN CHECK CLEARING PROCESSES.

EXCEPTIONS

YOUR LEGISLATION, MR. CHAIRMAN, RIGHTFULLY SUGGESTS THAT DEPOSITS OVER A PARTICULAR VALUE THRESHOLD, ESTABLISHMENT OF NEW ACCOUNTS, EXPERIENCE WITH REPEATED OVERDRAFTS, FOREIGN CHECKS AND EMERGENCY CONDITIONS BE TREATED AS EXCEPTIONS. FLEXIBILITY MUST BE RESERVED FOR FINANCIAL INSTITUTIONS TO HANDLE SPECIAL CASES. NCSL WOULD SUGGEST, HOWEVER, THE FOLLOWING MODIFICATIONS AND ADDITIONS:

O THAT ITEMS INDIVIDUALLY OR IN THE AGGREGATE EXCEEDING $2,500 BE

SUBJECTED EITHER TO WRITTEN BANK POLICY TIME LIMITS OR HELD UNTIL THE ITEM(S) CLEAR ON A COLLECTION BASIS, (NEW YORK, MASSACHUSETTS AND RHODE ISLAND UTILIZE THIS THRESHOLD). I FEEL THAT STATE DECISIONS FOR UTILIZING $2,500 THRESHOLD WERE PRUDENT AND SENSITIVE TO PRIOR PROBLEMS WITH FRAUDULENT AND BAD CHECKS.

O THAT A CUSTOMER AND A FINANCIAL INSTITUTION MAY MUTUALLY AGREE, IN WRITING, TO AN EXTENDED HOLD PERIOD, PROVIDED THAT IT IS NOT A TYPICAL OR USUAL BUSINESS PRACTICE.

O THAT FINANCIAL INSTITUTIONS BE PERMITTED TO EXTEND HOLD PERIODS, WHENEVER THEY DOUBT COLLECTIBILITY, THROUGH WRITTEN POLICY OR BY IMPOSING A COLLECTION BASIS PROVISO. MASSACHUSETTS HAS SUCH A REGULATION WHICH CALLS ON FINANCIAL INSTITUTIONS ONLY TO USE THIS EXCEPTION "IN GOOD FAITH". NEW YORK HAS SIMILAR REGULATORY LANGUAGE. CHECK KITING AND OTHER FRAUDULENT SCHEMES POSE SERIOUS PROBLEMS FOR BANKS, THRIFTS AND CREDIT UNIONS. EXISTING CHECK HOLDS POLICIES HAVE NOT WORKED WELL TO CURB THESE SCHEMES SINCE THERE IS A LIMITED RELATIONSHIP BETWEEN LIMITING FUNDS AVAILABILITY AND FRAUD. NONETHELESS, TO THE EXTENT THAT LIMITING FUNDS AVAILABILITY MIGHT TEMPER OR DISCOURAGE CHECK KITING, THEN A LEGISLATIVE OR REGULATORY DIRECTIVE PERMITTING SOME FLEXIBILITY FOR CHECK HOLD CEILINGS SEEMS REASONABLE.

STATE LAWS

NCSL RECOGNIZES THAT FUND ACCESS PROBLEMS CREATED BY UNEVEN CHECK HOLD POLICIES APPEARS TO BE A NATIONAL ISSUE AS WELL AS ONE WHICH INDIVIDUAL STATES ARE ADDRESSING. WHILE NCSL DOES NOT ORGANIZATIONALLY ATTEMPT TO FASHION INDIVIDUAL STATE ACTIONS, ITS MEMBERSHIP DOES DEVELOP POLICY TO INDICATE WHEN

FEDERAL ACTION IS ADVISABLE.

FEDERAL ACTION TO ENSURE UNIFORMITY AND ADHERENCE BY FEDERALLY-CHARTERED BANKS IS NEEDED. EACH STATE WHICH HAS ENACTED PERTINENT LEGISLATION HAS INTENDED IT TO APPLY TO ALL IN-STATE INSTITUTIONS. REGULATORY ACTIONS BY THE FEDERAL HOME LOAN BANK BOARD AND THE NATIONAL CREDIT UNION ADMINISTRATION INDICATING THAT COMPLIANCE WITH STATE CHECK HOLD LAWS WAS UNNECESSARY HAS NOT BROUGHT THE NATION ANY CLOSER TO RESOLVING THIS ISSUE. I CAN REPORT, HOWEVER, FROM CONVERSATIONS WITH LEGISLATORS AND REGULATORS FROM OTHER STATES WITH CHECK HOLD LEGISLATION, THAT FEDERAL INSTITUTIONS HAVE USUALLY, ALTHOUGH NOT UNIVERSALLY, COMPLIED WITH STATE INITIATIVES.

HR 2443 (IN SECTION 6) PERMITS STATES TO ADOPT LAWS REQUIRING SHORTER PERIODS OF TIME FOR FUNDS DEPOSITED BY CHECK TO BE MADE AVAILABLE FOR WITHDRAWAL. I WOULD SUGGEST THAT THIS LANGUAGE BE EXPANDED TO INCLUDE "STATE LAWS AND/OR STATE REGULATIONS". AMONG THOSE STATE LEGISLATURES WHICH HAVE ADOPTED LEGISLATION, ONLY RHODE ISLAND AND CONNECTICUT HAVE SET CHECK HOLD PERIODS BY STATUTE. IT IS NOT ATYPICAL FOR STATES, (AS IN MASSACHUSETTS, NEW YORK AND CALIFORNIA LEGISLATION) TO ESTABLISH GENERAL POLICY PRINCIPLES TO BE FINE-TUNED THROUGH REGULATION. FEDERAL LEGISLATION SHOULD ADDRESS THIS SITUATION.

I WOULD FURTHER URGE THAT LANGUAGE BE ADDED, TO SECTION 6, EXPLICITLY ASSURING THAT FEDERALLY-CHARTERED INSTITUTIONS (AS WELL AS STATE-CHARTERED INSTITUTIONS) MUST COMPLY WITH STATE STATUTES AND REGULATIONS WHICH IMPOSE MORE RESTRICTIVE FUNDS AVAILABILITY TIME LIMITS. WITHOUT THIS LANGUAGE, THE NATION WOULD END UP WITH AN UNEVEN POLICY NOT IN THE BEST INTERESTS OF DEPOSITORS AND

CONSUMER PROTECTION. WITHOUT SUCH LANGUAGE, FEDERAL LEGISLATION FROM NCSL'S PERSPECTIVE IS MEANINGLESS.

DISCLOSURE

"WHAT IS LACKING IN MANY INSTANCES IS CUSTOMER AWARENESS OF WHAT HIS/HER BANK'S 'HOLD POLICY' IS". THIS STATEMENT, IN WHICH I WHOLEHEARTEDLY CONCUR, WAS MADE OVER THREE YEARS AGO TO THE NEW YORK STATE ASSEMBLY COMMITTEE ON BANKS BY THE SENIOR VICE-PRESIDENT OF THAT STATE'S SAVINGS AND LOAN ASSOCIATION.

THE QUESTION WHICH HAS BEEN PLACED BEFORE STATE LEGISLATURES AND IS BEFORE THIS SUBCOMMITTEE IS WHETHER TO MANDATE, STATUTORILY OR VIA REGULATION UNIFORM DISCLOSURE POLICIES OR ALLOW THE INDISTRY TO AUTHOR ITS OWN POLICIES. NCSL BELIEVES THAT THERE ARE ELEMENTS OF BOTH APPROACHES WHICH ARE LIKELY TO ENHANCE CONSUMER AWARENESS AND UNDERSTANDING OF CHECK HOLD POLICIES.

DISCLOSURE SHOULD INCLUDE WRITTEN FUNDS AVAILABILITY FOR WITHDRAWAL POLICIES FOR NEW CUSTOMERS. THESE POLICIES SHOULD BE MADE AVAILABLE PRIOR TO OPENING A NEW ACCOUNT. HR 2443 APPEARS TO COVER THIS IN SECTION 8.

DISCLOSURE FOR NEW AND EXISTING ACCOUNTS MIGHT ALSO INCLUDE CONSPICUOUS DISPLAY IN OR AT BRICK AND MORTAR AND ELECTRONIC DEPOSIT FACILITIES. OREGON, NEW YORK, RHODE ISLAND AND CONNECTICUT APPROACH THIS DIFFERENTLY AS PORTRAYED IN CHART #4. HR 2443 APPEARS TO COVER THIS ISSUE ALSO.

I WOULD SUGGEST, AS OREGON HAS DONE, THAT NOTICE OF MODIFICATIONS TO EXISTING POLICIES, BE MADE TO ALL ACCOUNT HOLDERS A SET NUMBER OF DAYS (OREGON STIPULATES 30 DAYS) PRIOR TO THE EFFECTIVE DATE OF THE PROPOSED MODIFICATIONS.

HR 2443 ADDRESSES THIS MATTER AFTER THE FACT RATHER THAN BEFORE IT.

THE ISSUE OF DISCLOSURE, MR. CHAIRMAN, IS NOT LIMITED TO CHECK HOLD POLICIES AS MANY STATE LEGISLATURES HAVE ALREADY WITNESSED. IT RELATES TO THE NEED FOR INFORMATION REGARDING ACCOUNT OPTIONS, SERVICE FEES AND INTEREST RATES. DISCLSOURE, AS STATE'S HAVE ALREADY REALIZED AND AS EXEMPLIFIED BY VARIOUS BILLS WHICH MANY MEMBERS OF THIS SUBCOMMITTEE HAVE INTRODUCED, IS ONLY ONE OF A HOST OF ISSUES WHICH REQUIRES STATE LEGISLATIVE AND CONGRESSIONAL ATTENTION. NCSL ENCOURAGES YOU, MR. CHAIRMAN, TO HOLD HEARINGS ON OTHER MATTERS BEING RAISED BY CONSUMERS WHICH WOULD ENHANCE ACCESS TO AND SERVICES RENDERED BY THE NATION'S FINANCIAL INSTITUTIONS.

MR. CHAIRMAN, I WANT TO THANK YOUR EXTENDING THIS OPPORTUNITY TO NCSL TO PARTICIPATE IN THESE HEARINGS AND I WILL GLADLY RESPOND TO ANY QUESTIONS WHICH YOU AND OTHER MEMBERS OF THE COMMITTEE MIGHT HAVE.

CHART I

STATE CHECK HOLD/ FUNDS AVAILABILITY POLICIES

State	Legislation	How Time Limits are Determined	Local Depository Institution	In-State Depositor Institution Other Than Local	Out-of-State Depository Institution
California	AB 1723 (1983)	Regulation	1 day	2-4 days (4-5 days for thrifts and credit unions)	8-9 days (9 days for thrifts and credit unions)
Connecticut	PA-85-194 (1985)	Statute	4 days	4 days	7 days
Massachusetts	PA-390 (1984)	Regulation	2 days	3 days	5 days (3 days in New England states)
New York	AB-7054 (1983)	Regulation	2 days (3 days-thrifts)	3 days (4 days-thrifts)	6 days (8 days-thrifts)
Oregon	HB 3016 (1985)	NA	----	----	----
Rhode Island	PL-378 (1985)	Statute	2 days (1 day if drawn on same bank; 3 days for thrifts & credit unions	4 days (5 days for thrifts & credit unions)	6 days (Fed. Res. Dists. 1 & 2 - other than in-state) 8 days (all other out-of-state areas; 9 days for

CHART II

STATE FUNDS AVAILABILITY POLICIES

STATE	U.S. TREASURY DRAFTS	LOCAL/STATE GOVERNMENT DRAFTS	DEPOSITS AT ELECTRONIC FACILITIES	CASHIER'S CHECKS
CALIFORNIA	1 DAY	1 DAY	OPTION TO ADD ONE DAY	0 DAYS - BANKS AND CREDIT UNIONS UNDER SPECIFIC CONDITIONS
CONNECTICUT	----	----	----	----
MASSACHUSETTS	2 DAYS	----	ADD 1 DAY	----
NEW YORK	1 DAY	1 DAY	ADD 1 DAY	----
OREGON	----	----	----	----
RHODE ISLAND	1 DAY	1 DAY	----	1 DAY (UNDER SPECIFIC CONDITIONS)

CHART III

STATE FUNDS AVAILABILITY POLICY EXCEPTIONS

STATE	INSTITUTIONS CAN MAKE FUNDS AVAILABLE MORE QUICKLY THAN CHECK HOLD PERIOD	INSTITUTION/CONSUMER CAN AGREE TO LONGER HOLD PERIODS THAN USUAL	LONGER CHECK HOLDS DUE TO SUM OF ITEMS DEPOSITED	LONGER CHECK HOLDS BECAUSE OF PREVIOUS OVERDRAFT PROBLEMS
CALIFORNIA	YES	----	BANK POLICY PREVAILS FOR ITEMS(S) OVER $2,500	YES - BANK POLICY PREVAILS WHEN 3 OVERDRAFTS IN 6 MONTH PERIOD.
CONNECTICUT	YES	----	----	----
MASSACHUSETTS	----	YES	BANK POLICY OR COLLECTION BASIS FOR ITEM(S) OF $2,500 OR MORE	YES - BANK POLICY PREVAILS WHEN 3 OVERDRAFTS IN 6 MONTH PERIOD.
NEW YORK	YES	YESS	BANK POLICY OR COLLECTION BASIS FOR ITEMS(S) OVER $2,500	YES - BANK POLICY PREVAILS WHEN 3 OVERDRAFTS IN 6 MONTH PERIOD.
OREGON	----	----	----	----
RHODE ISLAND	YES	----	BANK POLICY OR COLLECTION BASIS FOR ITEM(S) OVER $2,5000.	----

CHART III - CONTINUED

STATE	LONGER CHECK HOLDS BECAUSE AN INSTITUTION DOUBTS COLLECTABILITY	LONGER CHECK HOLDS DUE TO EMERGENCIES, UNCONTROLLED SITUATIONS	LONGER CHECK HOLD BECAUSE STATE REGULATOR DETERMINES EXTENSION IS NECESSARY	NEW ACCOUNTS
CALIFORNIA	----	YES	----	YES
CONNECTICUT	YES	----	YES	YES
MAINE	YES	YES	----	YES
NEW YORK	YES	YES	----	YES
OREGON	----	----	----	----
RHODE ISLAND	----	----	----	YES

CHART IV

Disclosure of
Check Hold/Funds Availability
Policies

State	How Mandated	Disclosure Techniques (not inclusive)
California	Regulation	1. In writing to new customers
		2. Post notice in conspicuous place in all depository institutions
		3. Teller must disclose if a hold will be imposed at time of deposit.
Connecticut	Statute*	1. **Post** notice in **each** branch explaining time limits.
		2. Inform all customers in writing
Massachusetts	Statute/ Regulation	1. Upon request, in writing
		2. Disclose to new accounts
		3. Issue written statement at least once per year to any account for which a periodic statement is issued.
New York	Regulation	1. In writing, to all customers
		2. Post notice in a conspicuous place in each manned branch.
Oregon	Statute	1. In writing upon opening an account.
		2. Notify each account holder 30 days prior to policy changes
		3. Post notice in a conspicuous place in each branch.
Rhode Island	Statute	1. In writing, prior to opening a new account
		2. In writing to all customers within 3 months of law's effective date.
		3. Deposit slip disclosure.

*PA-84-164.

Chairman **St Germain**. Thank you, Senator Gannon.

You mentioned the fact that we should look into other areas, and we intend to. This gentleman went to the bank with his daughter and wanted to buy a 2-year CD. She had $500 in cash, green stuff, so the father wanted her to do this on her own.

All of a sudden, she looked around and it was obvious she was having a problem. The father inquired as to what it was. It seems the bank had a policy that no one could open an account unless their signature could be verified from an existing account.

I explained that if every bank in New York had that policy, no new accounts could ever be opened, but they needed the policy to protect against unauthorized deposits of checks and subsequent withdrawals.

I told them she wanted to deposit green stuff, and didn't intend to withdraw it for 2 years. They were unmoved. Isn't that funny? It is also sad.

Now, we will hear from Mr. Albert Williams, who is first vice chairman of the Credit Union National Association.

STATEMENT OF ALBERT WILLIAMS, FIRST VICE CHAIRMAN, CREDIT UNION NATIONAL ASSOCIATION

Mr. **Williams**. Mr. Chairman, members of the subcommittee, I am pleased to be here to present the views of the Credit Union National Association in regard to H.R. 2443.

For the past 13 years, I have been the manager of the Lister Hill Employees Credit Union in Muscle Shoals, AL. I also serve as the first vice chairman of CUNA.

Before I begin my comments on your legislation, Mr. Chairman, I would like to thank you and the ranking minority member of the Banking Committee, Mr. Wylie, and many other members of the committee for their recent efforts in the fight to preserve the credit union tax exemption.

This is the single most crucial issue facing the credit union movement today, and we really appreciate the support you have given us.

The credit union movement shares your concerns, Mr. Chairman, that consumers be provided prompt access to funds deposited by check and that consumers fully understand the terms and conditions of all accounts.

Furthermore, we agree that consumers have a right to expect that certain standard practices regarding the national payment system be followed by depository institutions.

In this light, we are pleased to offer our support for the check hold timetable set forth in H.R. 2443, and we will be glad to work with you and other subcommittee members in enacting legislation to achieve this goal.

CUNA Survey: In an effort to gather more specific information on certain credit union practices, CUNA conducted earlier this year a nationwide survey of credit unions to determine the rates credit unions pay on savings accounts, the fees they charge for servicing accounts, and what policies they have governing check holds.

The check hold information was quite revealing, and I would like to share it with the subcommittee. Eighty percent of all credit unions presently impose no check holds at all. Of the 20 percent which do impose check holds, the average hold varies from 3.2 days for local items for $250 and less, to 10.3 days for out of State items over $2,500.

Further, 87 percent of this latter group allow exemptions for selected types of checks, such as Social Security, payroll, and Government. Sixty percent of these credit unions routinely disclose check hold policies in statements, newsletters, and/or through lobby posters.

For your further information, I have attached the pertinent portions of the survey to my testimony.

This bill would extend to the Federal Reserve Board the authority to write regulations to carry out the requirements of the statute. We concur that this authority is appropriately placed with the agency charged with the overall responsibility for the payment system.

Additionally, we particularly support the provision in section 4(c)(3) permitting the Federal Reserve Board the authority to extend all time periods by 1 business day for savings and loan associations and credit unions.

Our survey does show that some credit unions will have to make some changes in their present policies to conform to the requirements of H.R. 2443.

Nevertheless, we do believe that it is not unreasonable to expect such changes to be met. In fact, during our annual meeting this past May, CUNA adopted a position of general support for the provisions of your bill.

Further, our Government Affairs Committee in a meeting last week adopted a resolution to develop a set of voluntary guidelines on check hold policies for credit unions.

Such guidelines will be similar to those in your bill and it is our intention to go forward in adopting these policies regardless of the outcome of this legislation.

With respect to the disclosure provisions in section 8, CUNA continues to support disclosure by credit unions to their members of terms and conditions of all accounts.

While there may be some new disclosure paperwork required by H.R. 2443, we do feel that your bill ameliorates some of this burden by allowing credit unions to supply any new disclosures as part of their regular member mailings.

We do have a couple of concerns with the bill.

CUNA believes that the provisions in section 6(1) permitting different, shorter, timeframes to be established by individual States ought to be reconsidered.

Since the payment system is a national system, we are of the opinion that an attempt should be made to establish a uniform standard for all localities. A credit union serving members throughout the United States, whether by mail or by branch, should know that a single check hold schedule applies regardless of where or how the credit union receives funds from a member.

Our second area of concern is with the requirement of section 7 that any funds deposited in an interest-bearing account at a depository institution, including all credit unions, must accrue interest from the business day on which the deposit is made.

We estimate that 15,000 of the Nation's 18,100 credit unions would be forced to make fundamental changes in their basic savings account agreements. A credit union would be prohibited, for instance, from calculating dividends or interest on low or average monthly balances, or offering a share account that pays dividends from the first of the month if the deposit is made by the 10th of the month, and pays no dividends on any deposits made between the 11th and 31st of the month.

Originally, many of these types of accounts were established because the offering credit unions had limited data processing equipment. For them, a simple interest calculation method is essential if they are to maintain accurate records.

Section 7 of H.R. 2443 determines that it is desirable to begin to pay depositors immediately for the use of their money. However, other terms of the account may counterbalance a depositor's delay in not immediately earning interest on every deposit.

For instance, the institution may be paying a higher interest rate on the account, charging lower or no service charges, providing free checks, et cetera.

We would suggest either dropping this provision from the bill or amending it to require interest accrual no later than existing practices for all other deposits including cash deposits.

This concludes my statement, Mr. Chairman. I will be glad to respond to questions.

Thank you.

[Mr. Williams' prepared statement on behalf of the Credit Union National Association, with attached letter to Chairman St Germain and survey, follows:]

STATEMENT OF ALBERT WILLIAMS, FIRST VICE CHAIRMAN, CREDIT UNION NATIONAL ASSOCIATION, INC.

Mr. Chairman, members of the Subcommittee, I am pleased to be here today to present the views of the Credit Union National Association, Inc. on H.R. 2443, the Expedited Funds Availability Act. For the past 13 years, I have been the manager of the Listerhill Employees Credit Union in Muscle Schoals, Alabama. I also serve as the First Vice Chairman of CUNA.

For the record, CUNA represents virtually all of the 18,100 credit unions in this country and their 51 million members.* This is done through our network of credit union leagues located in each state, the District of Columbia, and Puerto Rico. The credit union movement presently has assets in excess of $130 billion.

Before I begin my comments on your legislation, Mr. Chairman, I would like to thank you and the ranking minority member of the Banking Committee, Mr. Wylie, and many other members of the Committee for the recent efforts in the fight to preserve the credit union tax exemption. This is the single most crucial issue facing the credit union movement today, and we really appreciate the support you have given us. In particular, we appreciate the effort you have made to increase your House colleagues' understanding of the credit union movement and why taxation would jeopardize the movement's primary goal of providing service to its members.

*CUNA MEMBERS
9,400 FEDERAL CREDIT UNIONS
7,000 STATE CREDIT UNIONS

Expedited Funds Availability

The credit union movement shares your concerns, Mr. Chairman, that consumers be provided prompt access to funds deposited by check and that consumers fully understand the terms and conditions of all accounts. Furthermore, we agree that consumers have a right to expect that certain standard practices regarding the national payment system be followed by depository institutions.

In this light, we are pleased to offer our support for the check-hold timetable set forth in H.R. 2443, and we will be glad to work with you and other Subcommittee members in enacting legislation to achieve this goal. There are two auxiliary provisions within the present bill, however, which are of concern to us and which I will address later in my testimony.

CUNA Survey

In an effort to gather more specific information on certain credit union practices, CUNA conducted earlier this year a nationwide survey of credit unions to determine the rates credit unions pay on savings accounts, the fees they charge for servicing accounts, and what policies they have governing check-holds.

The check-hold information was quite revealing, and I would like to share it with the Subcommittee. 80% of all credit unions presently impose no check-holds at all. Of the 20% which do impose check-holds, the average hold varies from 3.2 days for local items of less than $250, to 10.3 days for out of state items over $2,500. Further, 87% of this latter group allow exemptions for selected types of checks such as social security, payroll, or government. I would point out, Mr. Chairman, that in many instances the delay imposed by the credit union reflects a corresponding delay experienced by the credit union in receiving provisional credit itself. 62% of these credit unions routinely disclose check-hold policies in statements, newsletters, and/or through lobby posters. For your further information, I have attached the pertinent portions of the survey to my testimony (Attachment A).

H.R. 2443

This bill would extend to the Federal Reserve Board the authority to write regulations to carry out the requirements of the statute. We concur that this authority is appropriately placed with the agency charged with the overall responsibility for the payment system. Additionally, we particularly support the provision in Section 4 (c)(3) permitting the Federal Reserve Board the authority to extend all time periods by one business day for savings and loan associations and credit unions. We appreciate this flexibility which might well be needed on a case by case basis.

Your bill would require the Federal Reserve to develop within 5 years a system permitting availability of funds within one day on local institutions and three business days for all other institutions. In the interim period a graduated time schedule would be in effect ranging from 1 day on checks of $100 or less, checks from in-state branches of the institution, and certain government checks to 8 business days for checks on depository institutions with offices only out of the state of the receiving institution. We concur with these time frames and believe that the transitional period would not be excessively burdensome.

Our survey does show that some credit unions will have to make some changes in their present policies to conform to the requirements of H.R. 2443. Nevertheless, we do believe that it's not unreasonable to expect such changes to be met. In fact during our annual meeting last April, CUNA adopted a position of general support for the provisions of your bill. Further, our Government Affairs Committee met last week and adopted a resolution to develop a set of voluntary guidelines on check-hold policies for credit unions. Such guidelines will be similar to those in your bill and it is our intention to go forward in adopting these policies regardless of the outcome of this legislation.

With respect to the disclosure provisions in Section 8, CUNA continues to support disclosure by credit unions to their members of terms and conditions of all accounts. While there may be some new disclosure paperwork required by H.R. 2443, we do feel that your bill ameliorates some of this burden by allowing credit unions to supply any new disclosures as part of their regular member mailings.

We are also supportive of the flexibility given in Section 5 through exemptions for large checks, new accounts, problem accounts, foreign accounts, and emergency situations.

Items of Concern

CUNA believes that the provisions in Section 6 (1) permitting different (shorter) time frames to be established by individual states ought to be reconsidered. Since the payment system is a national system, we are of the opinion that an attempt should be made to establish a uniform standard for all localities. A credit union serving members throughout the United States, whether by mail or by branch, should know that a single check-hold schedule applies regardless of where or how the credit union receives funds from a member.

Our second area of concern is with the requirement of Section 7 that any funds deposited in an interest-bearing account at a depository institution, including all credit unions, must accrue interest from the business day on which the deposit is made. This means that all passbook savings accounts, share accounts, NOW accounts, share draft accounts, money market accounts, and certificates would have a Congressionally mandated term regarding the beginning of interest computation. We estimate that 15,000 of the nation's 18,100 credit unions would be forced to make fundamental changes in their basic savings account agreements. A credit union would be prohibited, for instance, from calculating dividends (interest) on low or average monthly balances, or offering a share account that pays dividends from the first of the month for any funds deposited by the tenth of the month, and pays no dividends on any deposits made between the 11th and 31st of the month.

Originally, many of these types of accounts were established because the offering credit unions had limited data processing capabilities. About half of the credit unions in the country today still have less than $1 million in assets. An estimated 9,000 credit unions do not even now have automated data processing equipment. For them, a simple interest calculation method is essential if they are to maintain accurate records. While more credit unions, banks, and savings and loan associations are shifting to ADP systems, the traditional methods of computing passbook interest continues.

Section 7 of H.R. 2443 determines that it is desirable to begin to pay depositors immediately for the use of their money. However, other terms of the account may counterbalance a depositor's delay in not immediately earning interest on every deposit. For instance, the institution may be paying a higher interest rate on the account, charging lower or no service charges, providing free checks, etc. Many credit unions do not offer certificates, but instead pay a higher-than-passbook rate on the core--that is, the stable, longer term--funds in the share account. The bill proposes to mandate one term of an interest-bearing account with no consideration as to its effect on other terms of the account. Section 7 goes beyond disclosure to dictate one facet of the method of calculating interest. Section 7 as drafted would prohibit a wide range of savings accounts now offered by credit unions and other depository institutions.

We would suggest either dropping this provision from the bill or amending it to require interest accrual no later than existing practices for all other deposits including cash deposits.

This concludes my statement, Mr. Chairman. I will be glad to respond to questions.

Credit Union National Association, Inc.
1730 Rhode Island Ave. N.W. Washington D.C. 20036 202 828-4500

Joseph Perkowski
Chairman

October 8, 1985

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance
and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

The Credit Union National Association is well aware of your long-standing concern about unnecessary holds being placed on checks deposited by consumers in bank, savings and loan and credit union accounts. CUNA shares your concern and believes too that consumers are entitled to their funds in a timely manner when presenting a draft at their financial institution. We look forward to working with you and your staff to resolve the check-hold problems, many of the solutions to which are proposed in the "Expedited Funds Availability Act" that you introduced in May.

On August 28, 1985, CUNA released a survey on "Credit Union Service Charges and Check-Hold Policies." I am enclosing a copy of our survey results for your information. Our survey shows that approximately 80% of the credit unions in the United States impose no check-holds. The remaining 20% -- approximately 3,700 credit unions -- have some kind of check-hold policy, and average 3.2 days hold on local checks of less than $250 and up to 10.3 days hold on out-of-state checks of over $2,500. Of the 3,700 imposing some check-holds, a majority provide for one or more exemptions from their general policy. For instance, 93% of these credit unions exempt Social Security checks from any holds, and 79% exempt payroll checks. About 62% of the 3,700 credit unions imposing check-holds routinely disclose the credit unions' check-hold policies, by way of statement stuffers, credit union newsletters or lobby posters. Details of our results on check-hold policies are found on pages 36-40 of the survey.

CUNA has taken a hard look at the expedited funds schedule presented in Section 4 of H.R. 2443, and has compared it with the schedules established by New York and California for state chartered institutions. We understand that New York and California financial institutions have been able to comply with the deadlines without an increase in losses due to bad checks. Your bill would give the Federal Reserve Board, the agency charged with writing regulations to carry out the requirements of the statute, authority to extend any of these time periods by one business day for savings and loan associations and credit unions, a flexibility we appreciate. In addition, H.R. 2443 anticipates problem areas by providing a list of exceptions from the funds availability deadlines for large checks, new accounts, problem accounts, foreign checks and emergency situations. Our survey shows that some credit unions will have to change their policies to conform to the requirements of H.R. 2443, and some losses will, unfortunately, occur with the mandated clearing time periods. However, we think that available data show that today's losses are relatively small and that lengthy check-holds being imposed by some financial institutions are not justified.

Last April, CUNA's Governmental Affairs Committee voted to support the goals of various legislative proposals aimed at resolving the check-hold problem. Just recently, on September 30th, CUNA's Governmental Affairs Committee re-examined the issue of delayed funds legislation. The Committee not only reaffirmed its support for H.R. 2443, but it also voted to develop a voluntary check-hold compliance and disclosure plan that credit unions would adopt even if H.R. 2443 or similar legislation is not enacted this year. Our Governmental Affairs Committee agreed that credit unions can live with the proposed closing schedule in H.R. 2443. However, if losses were to rise significantly after enactment of H.R. 2443, we are confident that you and your colleagues would discuss the problem with the Federal Reserve Board and the affected financial institutions to see if amendments would be appropriate.

CUNA has always supported and continues to support disclosure to credit union members of terms and conditions of their share accounts and loans made by their credit union. While there will be some new disclosure paperwork required by Section 8 of H.R. 2443, and therefore some operational and material costs, we feel that your bill has anticipated certain concerns. For example, your bill allows credit unions to supply new disclosures as part of their regular mailings.

We do have two particular concerns with H.R. 2443 and would like an opportunity to discuss these concerns further with you and your staff. Our first concern is with Section 6(1) which would allow a state to adopt a separate delayed funds availability law as long as the state law provides for shorter holding periods. The payments system is a national system and we think that if Congress decides to act in this area to apply a rule to the 50 states and the District of Columbia, then there should be complete federal preemption. Section 3 of your bill mandates the Federal Reserve Board to develop an expedited check clearing system within 5 years to greatly reduce the interim clearing period set forth in Section 4. Consumers in New York -- to cite an example -- will not be unduly harmed by possibly having an extra clearing day for the next few years (and Section 4(c)(1) authorizes the Fed to shorten any of the time periods included in the law). A credit union serving members throughout the United States, whether by mail or by a branch system, should know that one uniform check-hold schedule applies regardless of where or how it receives funds from a member.

Our second area of concern is with the requirement of Section 7 that any funds deposited in an interest-bearing account at a depository institution, including all credit unions, must accrue interest from the business day on which the deposit is made. This means that all passbook savings accounts, share accounts, NOW accounts, share draft accounts, money market accounts, and certificates would have a Congressionally mandated term regarding the beginning of interest computation. We estimate that 15,000 of the nation's 18,500 credit unions would be forced to make fundamental changes in their basic savings account agreements. A credit union would be prohibited, for instance, from calculating interest (dividends) on low or average monthly balances, or from offering a share account that pays interest from the first of the month for any funds deposited by the tenth of the month, and pays no interest on any deposits made between the 11th and 31st of the month.

Many of these types of accounts originally offered these interest payment terms because of the limited data processing abilities of small depository institutions. About half of the credit unions in the country today have less than $1 million in assets. An estimated 9,000 credit unions do not have automated data processing. By setting up a simple interest calculation method, they can keep more accurate records. Even as credit unions, banks and savings and loan associations shifted to ADP systems, traditional passbook interest computation methods continued on many of these accounts. Section 7 of H.R. 2443 determines that it is desirable to begin to pay depositors immediately for the use of their money. However, other terms of the account may counterbalance the fact that the depositor is not immediately earning interest on every deposit. For instance, the institution may be paying a higher interest rate on the account, charging lower or no service charges, providing free checks, etc. Many credit unions do not offer certificates, but instead pay a higher-than-passbook rate on the core—that is, the stable, longer term—funds in the share account. The bill proposes to mandate one term of an interest bearing account with no consideration as to its effect on other terms of the account. Section 7 goes beyond disclosure to dictate one facet of the method of calculating interest. Section 7 as drafted would prohibit a wide range of savings accounts now offered by credit unions and other depository institutions.

CUNA would suggest that Section 7 of your bill either be deleted or modified to recognize the special methods that some small credit unions must use to calculate interest. If you feel that a provision on the crediting of interest is an essential part of H.R. 2443, then we suggest the language of Section 7 read:

> "For purpose of computing the amount of interest or dividends payable with respect to an interest bearing account or time deposit, a depository institution may not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument (or if provisional credit is given on a nonbusiness day, on the next business day) unless the computation of interest begins at a later date for all deposits, including cash deposits, made to the account or deposit. Nothing in this section requires the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid."

If this language is not acceptable, CUNA would hope to work with your staff to find an alternative for Section 7. The key language for us is the requirement that crediting interest/dividends on deposits by check be treated no differently than for deposits of cash.

CUNA looks forward to working with the Committee to find a solution to unnecessary delays in honoring checks deposited into consumer accounts.

Sincerely yours,

Joseph J Perkowski

Joseph Perkowski
Chairman

RESEARCH

1985

CREDIT UNION SERVICE CHARGES AND CHECK HOLD POLICIES

Final Report

Prepared July, 1985 by:

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ATTACHMENT A

EXECUTIVE SUMMARY

The data in this study were compiled from a survey of 1,600 credit unions conducted by the Credit Union National Association (CUNA) in March and April of 1985. The purpose of the study was to determine the extent to which fees are imposed by credit unions for basic financial services, and to examine credit union policies on holding deposited checks. By drawing on two other recent studies -- by the Consumer Federation of America and the U.S. Public Interest Research Group -- it was also possible to compare some credit union charges and practices with those of banks and savings and loan associations.

The findings of the CUNA study indicate that the vast majority of credit unions charge no fees for basic financial services. Credit union members on average pay far less for services than customers of banks and S&Ls, and are more likely to escape fees and charges. Credit union members are also less likely to have their deposited checks held before funds become available.

The following are among the major findings of the study:

- 75% of credit unions offering interest bearing checking (known at credit unions as "share drafts") impose no routine charges — i.e., charges on a per month or per check basis — regardless of the size of the account. By contrast, all but 5% of banks and S&Ls levy routine charges on their regular NOW accounts, the equivalent of credit unions' interest bearing checking accounts.

- While nearly 30% of banks and S&Ls charge a per check as well as a monthly fee on NOW accounts, only 1.2 % of credit unions impose both fees. Per check charges are rare in credit unions, occurring in only 10% of those offering checking and at an average of 15 cents per check.

- Interest bearing checking is available free of charge to retirement-age depositors in 82% of credit unions offering the service, vs. 39% of banks and S&Ls. The accounts are free to students or minors in 76% of credit unions vs. 7% of banks and S&Ls.

- An estimated 3 million credit union members earned a fixed annual rate of 10% or more on their share (regular savings) accounts in the first quarter of 1985.

- Most credit unions do not charge for savings withdrawals. Only 19% charge, and virtually all of these charge only if the number of withdrawals exceeds a certain limit — three withdrawals on average -- in a month.

- Only a small minority of credit unions have a policy of placing holds on local checks -- 9 to 15% of credit unions compared to 82% of banks and S&Ls. Between 17 and 20% of credit unions hold out-of-state checks, vs. 91% of banks and S&Ls. Credit union check holding policies varied with the amount of the checks.

- The charge for a "bounced" check averages $13.08 at banks, while credit unions on average charge only $9.24.

While the study shows that consumers in general fare better at credit unions than at banks and S&Ls, it is for small account holders -- those with balances averaging around $500 or less -- that the credit union advantage is particularly evident:

- Nearly four in ten (38%) banks and S&Ls require a minimum balance to avoid charges on an interest bearing checking account, while less than two in ten (19%) credit unions offering the service stipulate a minimum. In credit unions, the minimum balance to avoid charges is much lower on average than at banks and S&Ls -- $300 vs. $880.

- Credit unions that do charge when the account falls below a minimum impose average fees of $3.00 per month. Banks and S&Ls charge an average of $5.28 per month if an account falls below the minimum.

- The majority -- two-thirds -- of credit unions pay fixed rates on savings accounts; only a third pay split rates. Among the credit unions with split-rate accounts, depositors earn an average rate of 6.4% on small balances (as low as $101).

- 77% of credit unions offering interest bearing checking accounts require no minimum balance other than the nominal balance to open a regular savings account. Of those requiring a minimum, the vast majority (87%) require $100 or less.

- Small interest bearing checking accounts actually cost the consumer. A typical small account (average balance of $500 with balance falling below $300 once a month) would cost the depositor $75 net per year when fees and charges are subtracted. At credit unions the annual net cost would be $2.

The survey inquired about a number of other credit union services. Among the findings:

- Credit unions rarely charge for cashing Social Security checks for their members. Virtually all (98%) that offer this service provide it free.

- Travelers checks are available free to members in 62% of the credit unions that issue them.

- Nearly all credit unions surveyed (94%) responded that they make special arrangements for members facing loan repayment problems. The practices are diverse, including rescheduling loan payments (64%), allowing temporary payment reductions (55%), offering free financial counseling (50%), and permitting a brief period of skipped payments (30%).

Credit unions are able to provide an advantage over other financial institutions in these basic areas for a number of reasons. Because they are cooperatives, they can forego income and base decisions on member needs. Credit unions also rely heavily on volunteers, and many enjoy close relationships with their corporate sponsors, which often provide office space and other amenities to the credit unions serving their employees. The primary purpose of credit unions is to provide affordable financial services to members.

This survey was undertaken in response to concern among legislators and consumer advocates over the rising costs of basic financial services, particularly in banks. Low-income consumers, some fear, are particularly affected by such costs, which may in some cases effectively deny these consumers access to basic financial services. This concern has given rise to legislative proposals to require that financial institutions provide the most basic services free of charge to low-income consumers.

The CUNA survey found, in comparing credit union practices with those of banks and S&Ls, that small depositors in particular enjoy an advantage at credit unions. This would include consumers at all income levels who choose to maintain small accounts, but would obviously also cover the low-income consumers that advocates of "lifeline" banking are seeking to protect.

The two studies used to make comparisons with the data compiled by CUNA are "Bank Fees on Consumer Accounts: The Second Annual National Survey" by the Consumer Federation of America (CFA) and San Francisco Consumer Action, and "Held Up At The Bank: A Study of Check Hold Policies Across the Nation" by the U. S. Public Interest Research Group (U.S. PIRG). The CFA study was conducted in April 1985 in 14 states and the District of Columbia. The check hold study was done in late 1984 and early 1985 by Public Interest Research Groups in ten states.

The Extent and Duration of Check Holding

As shown in Figure 21, about one in five (20%) credit unions routinely imposes holds on deposited checks. This means that an estimated 3,720 credit unions, serving 29.6 million members, have policies covering the period between when an item is deposited and when funds are available for withdrawal.

Among those imposing check holds, the average duration varies from 3.2 days for local items of less than $250, to 10.3 days for out-of-state items over $2500. Not surprisingly, there is a steady increase in the average number of days an item is held when moving down the column in Figure 21. This simply means that both the size of the item and the location of the institution the item is written on influence the holding period.

Figure 22 shows that among the 3,720 credit unions imposing check holds, 87% allow exemptions for selected types of checks. An estimated 27.5 million members belong to credit unions holding checks, but exempting selected types of checks. Multiple types of exemptions are common: 93% exempt Social Security, 79% exempt payroll, 45% exempt other government, and 24% exempt corporate checks.

Figure 22 also reports the estimated number of members in credit unions allowing different types of exemptions. For example, 26.5 million members belong to credit unions exempting Social Security checks from check holds, and 24.5 million members belong to credit unions exempting payroll checks.

Because exemptions for Social Security checks are so widespread, only a small proportion of members have holds placed on these checks. For example, 22.1 million members belong to credit unions with no check holding, and 26.5 million belong to credit unions exempting Social Security checks from holds. This means that 48.6 million members, or 94% of all members, have no holds placed on deposited Social Security checks.

The bottom panel of Figure 22 summarizes check-hold disclosure procedures. The survey questionnaire inquired explicitly about *routine* disclosure, rather than about information made in response to member requests.

Figure 21

IMPOSITION OF CHECK HOLDS

N=18,400 (100%)*
51,700,000 members

Impose check holds?

Yes	No
N=3720 (20%)* 29,582,000 members	N=14,680 (80%)* 22,118,000 members

Check type	Average days
Local, less than $250	3.2
Local, $251–$2500	4.9
Local, $2501 and over	5.5
In state, less than $250	4.9
In state, $251–$2500	7.0
In state, $2501 and over	7.5
Out state, less than $250	7.2
Out state, $251–$2500	9.8
Out state, $2501 and over	10.3

*Percent of all credit unions

Figure 22

CHECK HOLD EXEMPTIONS AND DISCLOSURES

N=3720 (100%)* hold
29,582,000 members

Check hold exemptions allowed?

Yes	No
N=3230 (87%)* 27,511,000 members	N=490 (13%)* 2,071,000 members
Types exempted:	
Payroll: 79%** 24,543,000 members	
Social Security: 93%** 26,518,000 members	
Other government: 45%** 12,854,000 members	
Corporate: 24%** 8,286,000 members	

Are check holds *routinely* disclosed?

Yes	No
N = 2295 (62%)* 22,695,000 members	N = 1425 (38%)* 6,887,000 members
How disclosed? In statements: 37%*** In newsletter: 40%*** Posted in lobby: 33%***	

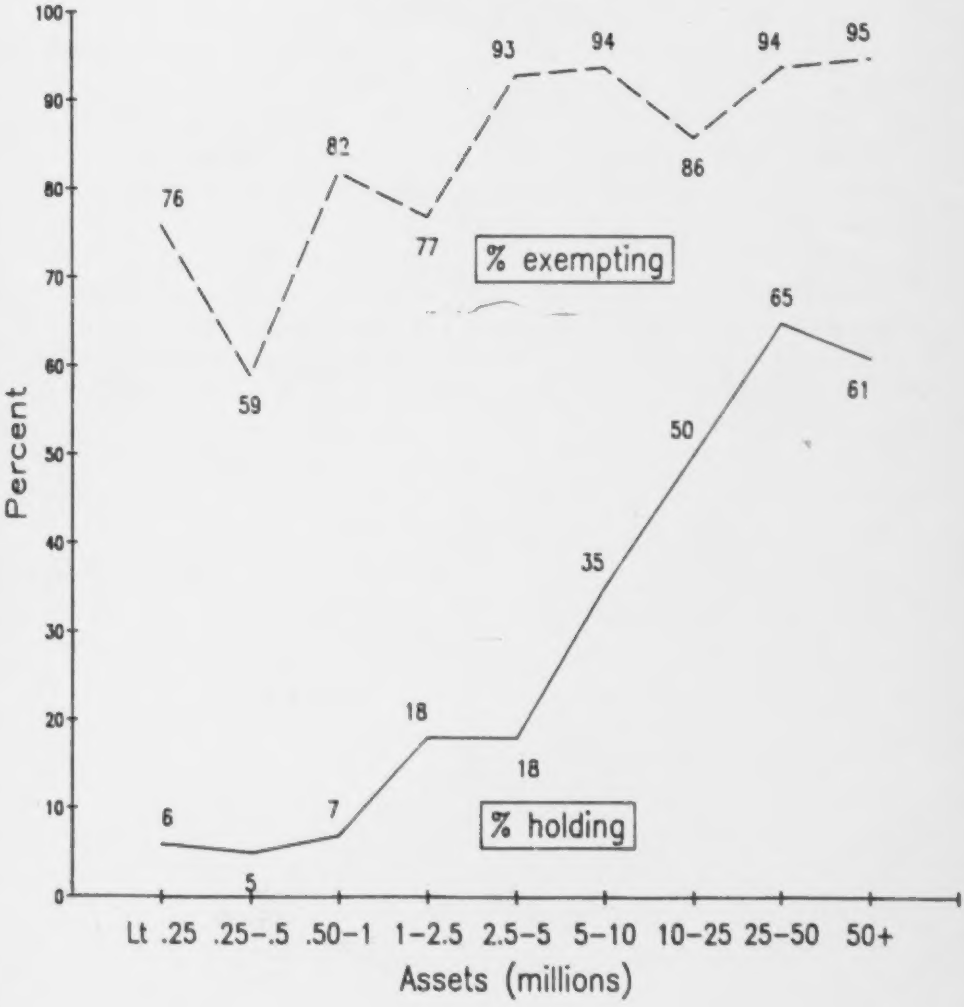
*Percent of credit unions holding checks
**Percent of credit unions allowing exemptions
***Percent of credit unions routinely disclosing period

Just over six in ten (62%) credit unions that hold checks routinely disclose holding periods. An estimated 22.7 million members are routinely notified of check-hold policies. Three types of disclosure mediums -- statements, newsletters, and lobby postings -- are all about equally likely to be used by credit unions.

Figure 23 summarizes check-hold practices of credit unions with different asset sizes. At about the $2.5 million asset level the likelihood of holding some types of checks (solid line) begins to increase. This likelihood "peaks" among credit unions with $25 to $50 million in assets, among which 65% place holds on some types of checks. Credit unions with $50 million or more in assets are less likely to hold checks than are their counterparts with $25 to $50 million in assets.

The proportion exempting select types of checks is found in the dashed line in Figure 23. The likelihood of exempting at least one type of check is somewhat greater for large than for small credit unions. Among credit unions with $25 million or more in assets more than 90% exempt at least one type of check from check holds.

Figure 23
CHECK HOLDING
BY ASSETS



Chairman **St Germain**. Thank you, Mr. Williams.

Now we will hear from Thomas J. Ryan, chairman, legislative committee, National Association of Federal Credit Unions.

STATEMENT OF THOMAS J. RYAN, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

Mr. **Ryan**. I am Thomas J. Ryan, president of Albuquerque Bell Federal Credit Union for the past 30 years, and currently, chairman of the legislative committee of the National Association of Federal Credit Unions, the only national organization that exclusively represents the credit unions chartered by the Federal Government.

NAFCU is pleased to have the opportunity to appear today on H.R. 2443, the proposed "Expedited Funds Availability Act." Its intent, to set in place a system for regulating the time that a depository institution can take to credit a check deposit to a customer's account, will benefit consumers of financial services by ending the patchwork of policies, some fair and some unfair, that exist among financial institutions today.

Mr. Chairman, NAFCU has prepared a formal statement on this subject, which, with your permission, I submit herewith for the hearing record. In the interest of time I will limit my oral testimony to the highlights of that statement.

As you know, Mr. Chairman, NAFCU has reviewed H.R. 2443, and our president, Robert A. Hess, wrote to you on August 19 of this year in support of the bill's principles and in specific endorsement of sections 3 and 4.

Those sections call for: One, a Federal Reserve-developed system to require check and other negotiable instrument deposits to be made available in the depositor's account within 3 business days from the date of deposit—locally drawn items would be credited on the next business day; two, disclosure to depositors of a financial institution's check hold policies; and, three, interim standards, pending the development of an acceptable check clearing system, to ensure that consumers of financial services are treated fairly with respect to the availability of their deposited funds.

Credit unions support these consumer advances because, as cooperative organizations, we have always stressed fair and equitable services to our members. There is no reason for a credit union to place inordinate and unfair holds on deposited items.

We are not-for-profit financial institutions, we have no outside stockholders, and we have no ties to commerce in the strictest sense because we cannot, by law, make commercial loans.

To protect our members, we must, of course, ensure that a deposit has collectible funds behind it before we make final credit to an account, but we make these determinations as swiftly as possible.

In our particular credit union, that determination is usually based on our close relationship with our members, the members' financial standing with the credit union or, in some cases, the members' association with the payor of the deposited item. These practices are similar to those of the credit unions in the Albuquerque area.

This kind of operations philosophy stems from the true mutuality concepts of all credit unions—the not-for-profit-but-for-service credo that formed an intrinsic part of the very first credit union charters in this country at the turn of the century and that remain as the single most fundamental catchwords of the movement today.

These concepts are so strong in credit unions, that when the Congress first began to discuss the funds availability issue over 2 years ago, credit unions questioned the need for their inclusion in its provisions.

For example, when the National Credit Union Administration testified last year on a similar bill, its chairman could not find a single example of a credit union member's complaint about untimely crediting of an account.

It is not a problem in the Federal Credit Union that I manage, and NAFCU knows of no particular problems in this area among our member credit unions. Almost 10 million members, nationwide, save and borrow at NAFCU-member credit unions, Mr. Chairman.

After those hearings, it was apparent to us that the mood of this committee was to make the proposed legislation uniformly applicable across the financial institution community.

We recognized the soundness of this view, and we are therefore pleased to add our voice to the urgings of some of the most proconsumer agencies in support of the bill's principles.

At the same time, Mr. Chairman, there are certain refinements that would improve the bill's reach and that would prevent, in our view, possible inequities for some credit unions, particularly the very small ones that are run almost entirely by volunteers and that are only capable of providing service for a few days of the week.

Credit unions are unique in that respect: We came into being to provide a source of low-cost consumer credit to individuals of average means and we have never lost sight of that special role.

There are hundreds of credit unions that serve the employees of very small businesses, the members of a neighborhood church and the inhabitants of a small rural community.

For many individuals in these situations, the credit union is the only source of affordable financial services. We want to preserve that tradition, Mr. Chairman, and we know from this committee's imprint on other far-reaching financial institution issues that you fully understand the special niche occupied by our Nation's member-owned and volunteer-led credit unions.

The amendments we are proposing to the proposed legislation are primarily ministerial in nature; they are covered in some detail in our prepared statement. If the committee has any questions about their efficacy, we will be glad to provide additional information.

In our opinion, Mr. Chairman, the amendments we are proposing will strengthen the bill without in any way mitigating its intent.

That concludes my oral presentation, Mr. Chairman. I will be glad to respond to any questions that you or the members of the committee may have.

Thank you.

[The prepared statement of Mr. Ryan and NAFCU's letter to the Chairman follow:]

STATEMENT OF THOMAS J. RYAN ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

Mr. Chairman and Members of the Committee, my name is Thomas J. Ryan. I am the president of Albuquerque Bell Federal Credit Union in Albuquerque, New Mexico and a director-at-large on the Board of Directors of the National Association of Federal Credit Unions (NAFCU), the only national organization exclusively representing the interests of federally-chartered credit unions. In addition, I also serve as chairman of NAFCU's Committee on Legislation. There are over 10,300 federally-chartered credit unions in the United States with over 30 million members. NAFCU appreciates the opportunity to testify on proposed legislation, H.R. 2443, the "Expedited Funds Availability Act", introduced by the Chairman on May 8, 1985.

BACKGROUND

The concepts upon which this proposed legislation is based have been under discussion in both Houses of the Congress in recent years. This proposal, if enacted into law, would require the Federal Reserve Board to establish a comprehensive check-clearing system which, among other things, would place limits on the time that a financial institution could restrict, or delay, the availability of funds deposited by check or other negotiable instrument in such financial institution by a customer/member. At least two states (New York and California) have enacted similar legislation, and on March 28, 1984, the Federal Reserve Board joined with the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the

Federal Home Loan Bank Board in issuing a policy statement to encourage the financial institutions that they regulate to voluntarily disclose their so-called check-hold policies to their depositors. The financial-institution supervisory agencies also recommended that financial institutions adopt practices that would prevent unnecessary delays on all checks, but particularly with respect to checks issued by government agencies for repetitive-type payments, such as for Social Security benefits, for which most financial institutions receive same-day credit in their accounts.

We understand, however, that some financial institutions still have not disclosed their funds-availability criteria and that some still place inordinate holds on checks that are normally cleared by banking channels within from one-to-three business days from the date of deposit. The desire of some financial institutions to "play the float" has resulted, we understand, in certain inequities for some consumers. The practice is apparently sufficiently widespread among certain financial institutions that five leading consumer organizations, including the Consumer Federation of America, recently wrote to all Members of the House of Representatives urging that they co-sponsor H.R. 2443, which they believe has strong pro-consumer implications. We, today, reiterate our support for prompt Congressional action to address this area of potential abuse.

PROVISIONS OF THE BILL

The proposed legislation would establish, under regulations of the Federal Reserve Board, uniform criteria for crediting customers' accounts in financial institutions, and would require all financial institutions to disclose their funds-availability policies to depositors. During the time granted in the bill for development of regulations, a period not to exceed five years from the date of enactment of the proposed legislation, H.R. 2443 would provide for specific time frames for crediting deposits to customers'/members' accounts. In general, the availability delay could not exceed one business day for checks of $100 or less, those drawn on in-state branches of the receiving institution and those issued by government units and endorsed by the rightful payee. Holds of up to three business days would be allowed for checks drawn on local depository institutions; four business days for those drawn on non-local institutions with in-state offices; and eight business days for those drawn on non-local institutions with no in-state offices.

We are pleased to note that Section 4 of the bill would give the Federal Reserve Board the authority to shorten the interim time frames and, for all non-cash deposits made at certain classes of financial institutions, including credit unions, to lengthen those periods by not more than one day.

Section 5 of the bill would exempt certain transactions, such as a single customer's deposits of over $5,000 in a single day, from the funds-availability criteria; Section 8 would establish criteria for the notification of new and existing depositors about the financial institution's policies on availability of deposits.

CREDIT UNIONS' VIEWS

As you know, Mr. Chairman, the credit union community has in the past generally been of the persuasion that it was unnecessary to include credit unions in proposed legislation to establish limits on the number of days that a depository institution could delay the availability of a deposit. This position stemmed from the fact that, as member-owned, cooperative financial organizations, credit unions have had closer contact with their members in the establishment of operations policies and procedures than is the case with financial institutions that are controlled by outside boards of directors. Each member of a credit union has an equal voice in electing the credit union's policy-making board of directors (who are volunteers that belong to and are vitally concerned with the internal affairs of the credit union). Thus, if there are policies and procedures in a credit union that are viewed by the members as unfair or inequitable, there is a clear and swift channel for re-ordering the credit union's policies.

The Chairman of the Board of the National Credit Union Administration (NCUA), the independent federal agency that regulates the nation's federally-chartered and federally-insured credit unions, testified before this Committee to that effect on April 4, 1984, on similar proposed legislation. At that time, the NCUA provided region-by-region statistics on the number of complaints by credit union members filed with the agency about credit union practices across the service spectrum of those credit unions. Those figures showed that there was approximately one complaint for every fifteen insured credit unions and -- most significant for purposes of this hearing -- that none of the complaints involved a credit union's check-hold policies. Let me repeat: The NCUA Board did not receive a single complaint in all of 1983 dealing with a credit union's check-hold policies. At that time, Mr. Chairman, you indicated that the proposed legislation should apply to the financial-institution community as a whole and that credit unions would have nothing to fear if, in fact, we were already in substantial compliance with the bill's terms.

In the intervening period, there has been ample opportunity to review the practices of credit unions vis-a-vis their members; we are still confident that credit unions are adopting and implementing wholly reasonable and fair practices in crediting deposits to members' accounts. Specifically, Mr. Chairman, NAFCU knows of no abuses among our member credit unions in that regard. We understand that the National Credit Union Administration Board is compiling revised statistics concerning consumer complaints -- if any -- about credit union check-hold policies. We welcome such a review, and pledge our cooperation in this effort.

That same time frame has also provided the opportunity for reflection on the position taken by the Chairman of this Committee: that the principles of the proposed legislation be made applicable to all classes of financial institutions. Mr. Chairman, as you well know, for its part the NAFCU Board of Directors reviewed the provisions of H.R. 2443 with respect to its check-hold provisions, and on August 19, 1985, the Association's President, Robert A. Hess, advised you by letter [See Attachment 1] that NAFCU supports the following provisions of the bill:

- development by the Federal Reserve Board of a system that makes it feasible to require all deposited funds to be available for withdrawal within three business days (one business day for items drawn on local institutions);
- disclosure by all institutions of their funds-availability policies to all customers/members; and
- establishment, as an interim measure, of funds-availability time limits for specific types of deposits,

subject to periodic review and, if appropriate, revision.

DETERRENT TO FRAUD

While NAFCU fully supports the principles of the proposed legislation and the specific provisions delineated above, there are certain specific provisions of the proposed legislation that we ask the Committee to revisit. In Section 3, the next-business-day availability on local-depository check deposits holds the potential for abuse by unscrupulous depositors. For example, under the proposed standards, a customer could deposit a local-depository check at the very close of one business day and draw out those funds at the beginning of the next business day. If there were no funds behind the deposited item, the receiving institution would have no choice, in some instances, except to make a payment against uncollected funds.

While we agree that next-day availability is a reasonable standard for these classes of deposits, and that the majority of financial institutions with state-of-the-art check-clearing operations could detect the intended fraud in sufficient time, some entities, such as small volunteer-dependent credit unions, would lack the necessary sophistication to do so. Therefore, although we do not propose that the Committee dilute its goal of next-business-day availability, we believe that the potential for check kiting is sufficient enough to warrant sanctions in the proposed legislation to diminish the likelihood of this kind of fraud.

LENGTHENING HOLD PERIODS

Mr. Chairman, NAFCU appreciates the Committee's recognition that many credit unions lack direct access to the sophisticated automated payment systems that are commonly available to and utilized by other financial institutions. Rather, the preponderance of credit unions utilize the services of what are referred to as "payable through" banks. In light of this unusual check-clearing process, characteristic of most credit unions, it would seem to be sound policy to permit an additional day for the clearance of such items. Accordingly, we suggest amending Section 4(c)(3) of H.R. 2443 to require tne Federal Reserve Board to utilize the flexibility provided by the bill. In the absence of such a requirement, we are concerned that the Federal Reserve might, without necessarily intending to do so, promulgate rules that fail to take into consideration the particular operating characteristics of credit unions.

DEPOSITS OF MULTIPLE OVERDRAFTS

Subsection (c) of Section 5 provides an exception to the expedited check-clearing standards of Section 4 in the case of an account holder who has three separate overdrafts in an account in any six-month period. As presently worded, the subsection applies only to items written by the depositor. We propose that the provision be expanded to cover all items deposited by the depositor -- because of the possibility of collusion by a depositor with respect to third-party checks.

RESUBMISSION OF RETURNED ITEMS

Since, we believe, there is an increased statistical probability that a dishonored third-party check could be returned for insufficient funds upon second presentment, we recommend to the Committee that these deposits should also be covered by the exception clause.

FOREIGN BRANCH OPERATIONS

As introduced on May 8, Section 5(d) provides that the interim hold policies set forth in Section 4 of H.R. 2443 "shall not apply in any case in which a check is drawn on a depository institution, or an office of a depository institution, located outside the United States." The Committee may wish to extend that exception to also include deposits made at foreign branches and/or facilities of domestic institutions.

ACCRUAL OF INTEREST

Section 7 of the bill requires that interest begin to accrue on the business day on which a deposit is made into an interest-bearing account. While this is a very straightforward and laudable objective, a significant number of credit unions -- principally those that operate only limited hours and are staffed solely by volunteers -- have followed a practice of paying dividends utilizing a method other than "the day of deposit to day of withdrawal." For example, at some of our small credit unions members have the opportunity of earning what amounts to a "bonus" dividend because many such credit unions pay dividends from the first of the month on funds received up until the tenth of the month. Funds deposited after the tenth of the month begin earning dividends beginning with the first of the following month. We ask that Section 7 be modified in such a way as to permit the continuation of this practice -- which is a virtual necessity for those many credit unions which still utilize the services of volunteers to handpost their accounts. In these instances, credit union members are now not only fully informed of the credit union's traditional dividend-crediting policies, but are also able to benefit from this practice. Such notification policies, of course, would be re-examined and re-enforced to assure that they are consistent with the goals of this bill.

ADMINISTRATIVE ENFORCEMENT

Section 12 of the bill under consideration today specifies which of the various regulatory agencies shall have responsibility for assuring compliance with the "Expedited Funds

Availability Act." Section 12(a)(3) notes that enforcement with respect to Federal credit unions or federally-insured credit unions shall be the responsibility of "the Administrator of the National Credit Union Administration." Since the enactment of Public Law 95-630 on November 10, 1979 (92 Stat. 3641) restructured the National Credit Union Administration from an agency under the direction of a sole Administrator to an agency under the direction of a three person board, we suggest a technical correction to Section 12(a)(3) to reflect this structural alignment.

CONCLUSION

Mr. Chairman, that concludes my prepared remarks. May I say in closing that this bill, with only minor changes, will be of benefit to all consumers of financial services. It is a clear example of the result of constructive dialogue between the Congress and the financial-institution community. We at NAFCU appreciate the opportunity to take part in that process. At this time, I will be glad to respond to any questions that you or Members of the Committee may have.

Attachment 1

NAFCU

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
P.O. Box 3769 WASHINGTON, DC 20007
(703) 522-4770

August 19, 1985

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

On behalf of the Board of Directors of the National Association of Federal Credit Unions (NAFCU) -- the only national organization exclusively representing the interests of federally-chartered credit unions -- we commend you for your efforts to eliminate the imposition of unnecessarily lengthy "checkholds" on consumer deposits. We share your view that members of credit unions as well as customers of other institutions are entitled to have the use of their deposited funds as rapidly as possible consistent with general principles of institutional safety and soundness. Accordingly, we are pleased to join NAFCU's voice with that of other consumer groups which have expressed public support for the underlying principles of H.R. 2443, the "Expedited Funds Availability Act."

As you and your colleagues in the Congress realize, credit unions are structurally different from banks and savings and loans in that credit unions are member-owned cooperatives. We are very proud of the excellent record established by credit unions in the provision of consumer financial services. As witnesses indicated in testimony before your Committee last year, during calendar year 1983 the National Credit Union Administration received a total of 999 complaints from credit union members. That translates to approximately one complaint for every 15 federally-insured credit unions. As the hearing record indicates: "...None of these concerned failure to credit a deposited check immediately or lack of access to funds on a reasonable basis..."

We are now in the process of determining what the impact of credit union "checkhold" policies have been on credit union member-owners since your Committee last held hearings on this subject in April of last year. We may recommend modifications of certain specific details of H.R. 2443 when that review is completed. However, we are pleased at this juncture to endorse the principles upon which H.R. 2443 is based. Specifically we support:

- development by the Federal Reserve Board of a system that makes it feasible to make all deposited funds available for withdrawal within three business days (one business day for items drawn on local institutions);
- disclosure by all institutions of their funds availability policies to customers/members; and
- establishment, as an interim measure, of funds availability time limits for specific types of deposits, subject to periodic review and, if appropriate, revision.

Chairman St Germain, we reiterate that NAFCU is committed to the principles upon which your "Expedited Funds Availability Act" is based. We look forward to working constructively with you and your colleagues in the Congress to assure that the goal of expedited funds availability is achieved.

Sincerely,

Robert A. Hess
President

Chairman St Germain. Mr. Glass and Mr. Tomson, everybody is testifying to the fact that there are very few holds placed on checks. Put it this way, for those that are placed, some people suffer a very great inconvenience, and that is our concern.

Let me ask this: Is it usual to put holds on Government checks such as IRS refunds, Government paychecks, and Social Security checks?

Mr. Glass?

Mr. Glass. Mr. Chairman, in our bank which I can speak directly to, it is an exception for us to place a hold period on an account. Our system is set up to provide immediate availability on checks and, for example, on the last——

Chairman St Germain. Mr. Glass, you are not here just representing your institution. You are here representing the exalted, erudite, highly effective American Bankers' Association. I would like you to address the question on behalf of the ABA.

Mr. Glass. I believe that the industry, based on the information we have, does not place blanket holds.

Chairman St Germain. Are you talking about Government checks now?

Mr. Glass. I am referring to Government checks.

I believe that the incidents that have been cited here today are an exception and not the rule, and I, nor the Association, would condone such unreasonable exceptions that have been cited here today.

Chairman St Germain. Mr. Tomson?

Mr. Tomson. Mr. Chairman, our association conducted a survey last year, and specifically, 84 percent of the banks responding did not list any delay for Government checks.

Chairman St Germain. What was the percentage?

Mr. Tomson. Eighty-four percent.

Chairman St Germain. Eighty-four percent responded?

Mr. TOMSON. No, of the banks that responded, 84 percent did not list any delay for U.S. Government checks, 12 percent reported a delay of 1 to 3 days.

Chairman ST GERMAIN. OK.

Therefore, would you say a 2- or 3-day hold is a reasonable and common practice on Government checks, Mr. Tomson?

Mr. TOMSON. Well, the preponderance, 84 percent would represent the preponderance that don't have any hold. The trick on Government checks is to follow the old adage, do you know your endorser, and if it is going into an account, you don't have to worry so much about that, and obviously, banks do carry insurance for fraud on endorsements.

Chairman ST GERMAIN. What you are saying is, if you have a customer banking with you for about 30 years, and that customer is depositing his or her check made out to him or her, that there should not be a hold?

Mr. TOMSON. No, there shouldn't be.

Chairman ST GERMAIN. Mr. Glass?

Mr. GLASS. I would agree.

Chairman ST GERMAIN. I was hoping that that would be the case, but this is based on an actual case history. The lady involved, Ellen Flores, is from Middletown, RI. The bank is a Newport, RI, bank.

Let me read to you a portion of what the Comptroller of the Currency said in a letter regarding this situation:

"It appears that two checks in question were held for 2 business days and 3 business days, respectively." I am quoting from the Comptroller. This is the Ellen Flores situation that they are referring to. "Some banks allow immediate credit for Federal checks. However, it is a common practice for many banks to delay availability of funds until the checks have cleared the collection process."

This is from the Comptroller of the Currency. This is why we are addressing these problems with legislation rather than just waiting and waiting and waiting for the Fed and the other supervisory agencies to come up with recommendations.

Let me read you another one. This is a story from the New York Times, by Ira Glasser.

> The other day, I tried to cash my salary check. Since I am the chief executive officer of the organization that employs me, I sign the checks. I also bank at the same bank my organization uses, so I thought I was safe. The check was made out to me, signed by me, and endorsed by me.
>
> It was drawn on an account at the same bank, and both I and my employer had balances at that bank, but the teller said no, the bank has its rules. I would have to get special permission from the bank officer, who could be found at the end of that long line, the one with 32 people on it, most of them in an advanced state of frenzy.
>
> I took my checks, and I went away.

Mr. Annunzio.

Mr. ANNUNZIO. Mr. Wilhelm, you claim that lengthy holds are necessary to protect against fraud losses. Millions of dollars are lost in check-kiting schemes every year. Lengthy check holds have not prevented those losses, have they?

Mr. WILHELM. They have not been entirely successful, that is true.

Mr. ANNUNZIO. Yes?

Mr. Wilhelm. We do believe that there is a deterrent aspect to the existence of availability policy that keeps check kiting schemes to a lower level than they would be, if it was generally known that banks were not placing holds or were, in fact, prohibited from placing a hold that would be sufficient to protect them on a bounced item.

I don't think there is a lot of empirical evidence to prove that point, because it is a rather dangerous experiment for any institution to be engaged in.

Mr. Annunzio. The independent banks take pride in servicing their communities and their customers. The credit unions likewise express their closeness with their members. Why do you suppose that the two credit union trade organizations can support H.R. 2443, while the independent bankers oppose it when your philosophies regarding your depositors are so much alike?

Mr. Tomson. I think our association and its members understand what you are trying to do. I certainly appreciate that. I would be very frustrated myself if I was the victim of some of these horror stories that I have heard this morning.

I think we should admit or would have to be the first to admit, when you are operating in a rural environment, we do have the advantage of knowing our endorsers, which does give us an operating advantage.

In many of our communities, a very significant portion of our depositor base consists of people who live on transfer payments, older people, because rural communities are a haven for retirees and older people.

The underlying reason I oppose it is because it is a rigid, fixed, costly piece of legislation to put in place, and to administer, and if there are ways we could accomplish this and meet your goals and objectives without having to incur this cost, that is what I think our association would promote, and work with you on that.

I think we don't like to see another piece of legislation come in on top of regulations that perhaps already exists, such as I suggested in regulation J. Let's take regulation J and give the Fed some more ammunition and work together and build a better communication system and look back on what happened in 1980 with the Monetary Control Act and proceed with that, and see that regulation J becomes a much more effective tool to the benefit of the consumer public rather than overlay this with some fixed and inflexible statute.

Mr. Annunzio. While your philosophies are similar in many respects, and on this particular aspect, they are not. Will this legislation in any way inhibit your membership, your institutions?

Mr. Tomson. If we are obligated to send out periodically more mail and do more printing and incur more costs, even at the direction of a new agency that is to be put in place as a part of this, I think that it is going to result in more administrative costs certainly.

We are operating at a time when certainly our interest margins are narrowing, and profits are harder to come by.

Chairman St Germain. Mr. Tomson, I asked Mr. Annunzio to yield, and I thank him. Don't your banks, don't you send out a monthly statement?

Mr. TOMSON. Yes.

Chairman ST GERMAIN. Don't you include other little items along with the statement, for instance, that you can get pots and pans if you get this kind of CD, a new wig, all that jazz, or a new toupee?

Mr. TOMSON. When it costs 22 cents to put an envelope in the mail, we do everything we can to eliminate the number of pieces of mail. We have gone to central information files.

Chairman ST GERMAIN. You have all kinds of stuffers, and that is fine, because you decide which stuffers.

Now you tell us it is going to add to the cost to disclose what the check hold policy is, to such a great degree, when you stuff it with all kinds of junk that your customers really don't want.

Mr. TOMSON. I don't believe that is a fair observation, Mr. Chairman.

Chairman ST GERMAIN. I think it is.

Mr. TOMSON. We are doing what we can to control our costs and efficiency and keep our costs down. We are criticized because of service charges that are too high. We are asked by the Comptroller of the Currency in our case to offer lifeline banking services, which mean that we should do the best job we can in offering services at the least amount of cost, and when we add mail and printing and stuffers, it adds to our cost and oftentimes is unnecessary.

Chairman ST GERMAIN. Mr. Wylie.

Mr. WYLIE. Thank you very much, Mr. Chairman.

We have alluded to the fact that we had some hearings last year on this very issue. I was convinced after those hearings that we needed to do something in the area of funds availability. There were indications of abuses.

I don't have any horror stories coming from the Columbus area, but I tried to put together a bill, H.R. 15, which has a provision in it for funds availability and my bill, Senator Gannon, has some thoughts that you have expressed here.

Your testimony had some appeal to me. I, at first, thought of having a mandatory provision, like the one in H.R. 2443 which would require funds availability on a 3-day basis for out-of-State and 1 day, within the community.

I decided that I couldn't put that in statutory language, so I asked the Fed to help draft some regulations, which could provide some flexibility, sensing that there might be some times when you couldn't say that the funds were collectible, and maybe, there might be customers who had a history of not having the funds available for collection on the other end, so I wanted to have that caveat to your statement.

I sense that you have given this matter a lot of thought, also. I would like from you Mr. Glass, first, a general comment.

Mr. GLASS. I support Senator Gannon's recommendation that the industry have the flexibility to extend holds on those items that would appear to be uncollectible beyond the strict schedule that is placed in the bill as drafted today.

I think it is necessary. Again, the industry in general does not place blanket holds, but we do have the ability today to place holds on checks that are questionable. We need to maintain that.

We do not need more regulation and legislation. We need to learn how to address our markets in a free market society, and I believe that disclosure and the ability of banks to retain the flexibility to impose selective holds on questionable items will result in consumer satisfaction and the continued safety and soundness of the check system.

Mr. WYLIE. You don't require Federal legislation to do this, but I think it might be on the horizon. I think we ought to begin a policy of 1-day availability on locally drawn checks, and 3-day availability on out-of-State or out-of-the-community, in which the bank does business checks.

Having said that, if any one of you would have any suggestion as to language, which could indicate that there might be an exception occasionally where I wouldn't suggest you require 1-day availability.

If you could come up with something along those lines, it would be helpful.

Mr. GLASS. Some of the State legislation, such as California, has some similar wording in it. It allows the exception.

Mr. WYLIE. I am going to call you "Mr. Funds Availability," and what is your experience of members complying with the California statute?

Mr. WILHELM. First of all, the experience of the banks in California is that we are living with our current maximum hold schedule. We find it about as tight as we can go, but so far, I am happy to report that we have not yet witnessed an increase in losses as a result of the implementation of that hold schedule, I would like to further add, that you indicated you had given some thought to delegating this responsibility to the Fed, and I think the California experience would tend to validate the wisdom of that.

In California, the legislation that was passed did delegate the responsibility of developing the hold schedule to the State regulator, the Banking Department, and the S&L Commissioner. That delegation turned out to be helpful to the banks and consumers because they had a forum in which their views were adequately aired before the adoption of regulations. We have also had the opportunity—within the first year—to revisit the regulations, to do some fine-tuning and to improve the availability for consumers. We don't think that kind of fine-tuning would have been possible if the hold schedule had been frozen into legislation.

Mr. WYLIE. Thank you very much.

Mr. Tomson, please respond to my first question.

Mr. TOMSON. I think it is important that we have some degree of discretion, when prudent judgment might indicate there is a possibility of a fraud or a kite or something of this nature.

If there is enough latitude in the law to at least permit discretion, it would be helpful. Another thought, this really has not been brought out this morning, blanket bond insurance is increasingly difficult for the financial institutions to get.

Costs are going up and it might be well for you to consider at least discussing this with underwriters.

Mr. WYLIE. I haven't gotten into that. My time has expired. I notice in this bill which the chairman put together, H.R. 2443, there is a section which provides for a class action and civil penalty.

I am not much for class action suits, and I think that is along the lines of your thought there, as far as insurance is concerned.

Thank you very much, Mr. Chairman.

Chairman **St Germain**. I am pleased to hear that Mr. Tomson is aware of the fact that the costs are going up. I had about 16 senior citizens on the steps of the Capitol yesterday, and they are with the Close-Up Program.

They really berated me because they can't understand why I am allowing the banks to increase their fees. Their costs are going up constantly, so it is nice to hear that Mr. Tomson is aware of the fact that insurance costs are going up and up on blanket bonds.

It is nice to be sympathetic to those customers as well about their costs going up.

Mr. Barnard.

Mr. **Barnard**. Thank you, Mr. Chairman.

Mr. Wilhelm, the support of this legislation has come about by some members who are supporting it after inquiring of the bankers in California and New York as to their reaction to the legislation, similar legislation passed in those States.

It has been said that you had a close association with the California legislation. What are some of the particular differences between that legislation and this legislation?

Mr. **Wilhelm**. The major difference is the point I just made about freezing into legislation a hold schedule rather than delegating that responsibility to a regulator who is involved with the payments system and is able to weigh the problems of a rural bank versus a major metropolitan bank.

From my understanding of my own institution, and the major banks in California, the hold schedule that is set forth in H.R. 2443 is not going to provide a major money center bank with any significant problems.

I can't say that that is necessarily true for a smaller bank that deals through a correspondent in a remote location.

We are also concerned with respect to how this bill is going to fit with existing State legislation. The overlap of the two bills is one of considerable concern, certainly to California banks.

Mr. **Barnard**. What about the provision here under civil liabilities, a similar provision in the California law?

Mr. **Wilhelm**. We do have a similar provision in California law. We were not happy with it, but we have it. The Consumer Bankers Association is every bit as concerned with the civil liability provisions in H.R. 2443. Certainly, our experience with the explosion of class action lawsuits after truth in lending came into being, with regard to the technical violations and the disclosure aspects of that law, gives us some concern here.

In California, we don't have specific regulations on the disclosures. The legislation there is quite general, and as a result of that, at least so far, I am not aware of any lawsuits that have been brought against California banks for failure to comply with the disclosure aspects.

Mr. **Barnard**. You also have a class action in your legislation?

Mr. **Wilhelm**. Yes.

Mr. **Barnard**. We have no one here from a New York bank. Mr. Schumer, does the New York legislation have the civil liability part?

Mr. **Schumer**. My staff, when they briefed me, said it is very similar to the Rhode Island legislation, and that is about the extent of my knowledge.

Mr. **Barnard**. I appreciate that valuable contribution.

Senator Gannon, does Rhode Island have both the civil liability and the class action provisions?

Mr. **Gannon**. No, we do not, and I would be more than happy to provide to Mr. Schumer a copy of the New York legislation. We do not have——

Chairman **St Germain**. Excuse me, if the gentleman would yield. Remember, New York did it by regulation, not by statute and the Banking Department did not have the power to incorporate a civil penalty.

Mr. **Barnard**. Thank you, Mr. Chairman.

Mr. **Schumer**. Took the words right out of my mouth.

Mr. **Barnard**. Senator, why is it that Rhode Island did not include civil liability and class action in its legislation?

Mr. **Gannon**. We felt at the time that that was an issue that we knew the bill was introduced this past legislative session, and we knew we would get tied up with that particular aspect and for the sake of moving the bill along, we decided to forego that at this particular time.

Mr. **Barnard**. Do you think your bill is as strong as it should be without that?

Mr. **Gannon**. I don't know as yet. We have to look at the bill, as has been stated earlier by Mr. Wilhelm, we hope to see what happens with this particular piece of legislation commencing in January of 1986.

We are willing to either amend or to make it more stringent in the future if necessary.

Mr. **Barnard**. Mr. Glass, Mr. Tomson, would you like to respond to that line of questioning? I am for seeing that the rest of the bill has no problems. Do you have any problems with these two sections?

Mr. **Tomson**. None of us like to have the opportunity to have class action suits placed against us, and I guess I would feel that in dealing with the problem here, it should be a very singular problem between an institution and a depositing customer, and there shouldn't be a necessity for a class action.

I represent smaller banks, and my viewpoint is probably slanted from the standpoint that this doesn't seem to be a problem for us to begin with.

Mr. **Barnard**. Mr. Glass?

Mr. **Glass**. I would agree. It is a singular issue between the bank and individual consumer and we are opposed to the class action segment of the Act.

Mr. **Barnard**. I have no further questions, Mr. Chairman.

Chairman **St Germain**. Mr. Tomson, do you have a copy of the Priority Voluntary Effort, this colorful publication? Have you seen this one?

Mr. TOMSON. No; I don't have it. We would probably have one in our bank.

Chairman ST GERMAIN. Mr. Glass?

Mr. GLASS. Yes; I have seen it.

Chairman ST GERMAIN. You talk about costs. Let me tell you this didn't come from the bargain basement. Do you know how much it costs to put this out, Mr. Glass?

Mr. GLASS. No, sir.

Chairman ST GERMAIN. Could you provide that cost for the record?

Mr. GLASS. Be glad to.

Chairman ST GERMAIN. You have no problem?

Mr. GLASS. No problem.

Chairman ST GERMAIN. Fine. That would be delightful.

[At the time the hearing went to press, no information was received from Mr. Glass.]

Chairman ST GERMAIN. Mr. LaFalce?

Mr. LAFALCE. Gentlemen, you are on a moving train moving very, very fast. We are going to pass this legislation, and the only debate we will have is regarding specifics. Even if you oppose legislation, let's talk about the specifics, because I think the question of whether there should be legislation is relatively moot.

There are four questions in my mind dealing with specifics. We have to have a schedule, and the question is, should that schedule be mandated by a law, or should we leave it up to the discretion of the Fed.

Quickly, Mr. Glass, by law or by regulation?

Mr. GLASS. By regulation.

Mr. TOMSON. By regulation.

Mr. WILHELM. Regulation.

Mr. GANNON. Law.

Mr. WILLIAMS. By law.

Mr. RYAN. By law.

Mr. LAFALCE. OK, even split.

On the question of preemption, there is going to be general sentiment that we ought to have preemption with a local option, if the State regulation or law is stricter than the Federal and the State should apply, that is in all probability.

Should we have total Federal preemption rather than uniformity, or should we also say that if we do allow more strict State regulation, should the Federal institutions in that State be subject to the more strict State legislation?

Mr. GLASS. States' rights should exist here. A State should have the right to establish their schedules.

Mr. LAFALCE. Federal institutions in such States?

Mr. GLASS. Repeat that question.

Mr. LAFALCE. In a State where, assuming we allow California option; that is, the States to have more strict standards and have them apply, should we say that in such cases, the stricter standards must also be applicable to the Federal institutions, or should the Federal institutions in a State be allowed to have more lenient standards than the State institutions?

Mr. GLASS. I would like to have a chance to consider that, and answer you later on.

[The answer to Mr. LaFalce's question was subsequently received from the American Bankers Association:]

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William J. Stanley, Jr
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October 16, 1985

The Honorable John LaFalce
2419 Rayburn House Office Building
Independence and South Capitol Street
Washington, D.C. 20515

Dear Congressman LaFalce:

During the hearings last week on H.R.2443 you inquired abou position of the American Bankers Association on whether or not there ought to be a "local option" for funds availability legislation. In particular you wanted to know: 1) Should states be allowed a "local option" to provide a stricter availability schedule than federal law?, and 2) Should national banks be required to comply with any such stricter schedule? Mr. Glass, who was our witness, indicated he was not sure of the Association's position on that issue, so I thought I would attempt to clarify it for you.

It is the position of the American Bankers Association that since the payments system operates on a national scale, rules an standards governing it should be national in scope. A patchwork of differing state laws, if it were allowed to develop, could present operational difficulties, especially for institutions which operate in more than one state. This potential problem certainly will be magnified over the next several years with the growth of regional banking arrangements.

For instance, a bank holding company operating in New England may have one operations center to process checks which may have been received in 2 or 3 different states. Differing state funds availability laws could require separate processing and new software to assign the right availability to each item. Such a situation is a potential operational nightmare.

Similarly, consumers may be confused as to the applicable law if they maintain accounts with institutions in more than one state. It seems to us a much better approach, since it is a national payments system, to address such matters with a uniform national scheme.

This position should provide the answer to the second part of your question as well. Obviously such a scheme would apply to all financial institutions.

We also feel any such regulation should cover all financial service providers who maintain consumer asset accounts, and which accept "deposits" to those accounts by check. The attributes of money market accounts held by investment companies mirror in many respects the features of traditional depository institution transaction accounts. There are several hundreds of these funds in operation holding many millions of consumers dollars. If the goal of this legislation is to assure that consumers know when their funds will be available for use, exclusion of these funds from coverage cannot be justified.

If you have any further questions please let me know.

Very truly yours,

William J. Stanley, Jr.

Mr. Tomson. Well, the IBAA stands firmly on States' rights. However, the payment system is a national system. The Federal Reserve is an agency we have established as an arm of Congress to see that the payment system is properly handled, that it is regulated, that regulations are enforced, and if we handle this through regulation, it makes no difference if you are in our case a State bank, a State nonmember bank, or a nonmember bank, we have to adhere to the regulations of the Federal Reserve System to clear our checks.

It is a bit of a dilemma.

Mr. LaFalce. I know. Should we have Federal preemption and not permit the States to have stricter standards?

Mr. Tomson. I would opt for the Federal standards, because money knows no home. It moves across the country, and it should move as smoothly as possible. That is a personal view.

Mr. LaFalce. Mr. Wilhelm?

Mr. Wilhelm. I agree with the proposition that has been stated. Uniformity in this area is extremely important. In California, there is no difference between the treatment of State-chartered and federally chartered institutions.

By that, I mean federally chartered institutions, probably could have chosen to try to oppose the applicability of State law in that situation. We chose not to, because we thought uniformity within the State was important.

Mr. LaFalce. Mr. Glass, having heard those comments, it the ABA taking a stricter position regarding States' rights than is the IBAA, or the spokesman for the IBAA?

Mr. Glass. I would like to back track and say that the position that I set forth was my own personal position, and would need to go back and respond to you for the ABA's position.

Mr. Gannon. Mr. LaFalce, I don't believe we should have total preemption at the State level, but I do believe that States should be allowed to have more stringent, and require that those Federal banks be required to adhere to the State laws.

Mr. LaFalce. I couldn't manual in a spokesman for the National Conference of State Legislators to say anything else?

Mr. Williams. We come down on the side of the States' rights, and will continue to do so. Our primary support of this legislation is based on achieving more uniformity in the national payment system, so we support that part of the legislation in that respect.

Mr. LaFalce. Mr. Ryan?

Mr. Ryan. I believe that credit unions predominantly believe in the dual chartering system and that States' rights should prevail in some cases, but the Federal preemption should apply to Federal credit unions.

We have many Federal credit unions that have branches in many States. For example, a Federal credit union with a branch in five different States could end up with five different check hold policies and it would be necessary for Federal credit unions to be obligated to comply with just one regulation.

Mr. LaFalce. Thank you.

My time has expired.

Chairman St Germain. I appreciate that line of questioning, John.

We are going to have to wrestle with that one. There are those States who feel that they have enacted legislation that is better than anything we could ever enact, and that have told me that they don't want us tinkering, so we have had some experience with this in the past. We will have to go back to some of the other legislation, where we looked at preemptive rights, et cetera, and look at them.

Which one of you is next? Mr. McKinney?

Mr. McKinney. My good friends from Georgia and New York have asked most of the questions I had. I thought you gentlemen might be interested to hear that we, too, are visitors to Washington, I have been here for 16 years, and am sometimes looked upon by the whole California banking community as weird.

I would like to tell you about an interesting experience I had which would amuse my credit union friends. I had a very young carpenter, who had no credit history, working on my house, because of his credit history I gave him $2,000 to buy lumber. I gave him a check on the Sergeant-at-Arms of the U.S. Congress, and he took it to his bank in Virginia, and was informed that there would be a 5-day hold.

He was a relatively new depositor at that institution. So, I went down to my Federal Credit Union, and asked if I could buy a $2,000 money order? I purchased it and gave it to my carpenter that night.

He went back to his bank and they put a 4-day hold on it. How any bank in Alexandria, VA, can put a 4-day hold on a credit union money order across the river is beyond my belief.

About 6 years before that, I was working on another house and I got a letter of credit from my bank in Connecticut for $10,000, with instructions to the Wasington bank that should there be any insufficient funds at any time, that $20,000 worth of collateral had been put aside in their name, and they were to call such and such an officer of the bank, at such and such a number, collect, and in fact that money would be wired instantaneously. So, I wander on down with my check from the bank in Connecticut and put it in the bank in Washington and write a lot of checks on Monday night and hand them out on Tuesday—90 percent of them came back marked insufficient funds.

This whole issue fascinates me. I understand your dilemma and I don't like to regulate the financial institutions to death because I don't think regulators do anything as well as bankers do. But I am a Congressman with 16 years on the Banking Committee, and I can pick up the phone and really start to howl. Eventually Alexandria got the message and gave my carpenter his money, but my constituents can't do that. I think that we need a basic Federal regulation, Mr. Chairman, on this policy, because I do see some geographical problems.

If you have a little bank in Raymond, ME, or Lockport, NY, you might have some time problems so we probably need some flexibility, but I think it should be universal. I simply brought up my two stories to let you know that it is not just our constituents that are outraged but we get caught, too, which is rather interesting.

Chairman St Germain. I have had a lot of members' wives complaining to me, some of the gals who, because of necessity are employed as well. A lot of them are in real estate and they have told me a lot of horror stories.

All financial institutions have done their utmost, they have made this legislation so easy for us to have adopted, because they have done it to so many people. People have done television shots of me, and national publications have interviewed me. They have all been taken to the cleaners on this, so that train, as John LaFalce said, has got a very strong engine.

Mr. Schumer?

Mr. Schumer. Happy to be the caboose on the train, Mr. Chairman.

Let me ask a couple of question about some of the statements that were made. My first question to the gentlemen, concerns the current great emphasis on voluntary compliance. By the way, I agree with the statements, this bill is going to pass.

Why wasn't there an emphasis on voluntary compliance 2, 3 years ago? I saw a fancy book just passed out. The chairman quoted something from the ABA's publication, saying this will forestall legislation.

We do have technological innovations that will speed things up and give consumers rights to their money more quickly. How much has the bank invested in the technological speedup prior to a month or two ago?

The ABA representative first.

Mr. Glass. I can't really speak to the first question that you asked, why a voluntary disclosure was not done earlier, other than to say that again, we believe that the blanket holds are an exception and not the general practice of the industry.

As a matter of fact, there is some confusion between what policy banks have as opposed to their practices and procedures.

Many banks have a policy available to them to apply to new accounts and certain types of items, but they do that on a very selective basis as opposed to a blanket basis. There is no way I could give you even an estimate of the investment in technology other than to say that within the last few years, a number of vendors, software and hardware, had developed automated return item equipment, sophisticated equipment and software.

The major issue is not the way the bank handles per se the return item but but the fact that we must return the item by the same route that it came to us under the uniform commercial code. To speed up the return item process, we must be able to return the item directly to the bank of first deposit.

Mr. SCHUMER. Have you ever asked for a change in the UCC? or has the ABA ever considered this?

Mr. GLASS. I would have to respond to that later in writing. I cannot tell you whether we have or not, as an association.

Mr. SCHUMER. Next question: The Federal Reserve estimates that $290 million was earned by banks on the check float in 1984. From my study of this issue—and, as you know, I have introduced legislation that is not dissimilar to the chairman's—that seems too low. Banks are earning significantly more than that, even using some of the estimates of some of the banks themselves.

But let's assume $290 million is the right number. That doesn't seem to indicate that this is a very selective process. $290 million is a lot of money.

Mr. GLASS. I would agree with you.

I am not familiar with the way the $290 million was calculated, so it is very difficult for me to address that.

Mr. SCHUMER. If there were $290 million, you would say something is wrong?

Mr. GLASS. I would question about how selective the holds are.

Mr. SCHUMER. Exactly.

Mr. Wilhelm.

Mr. WILHELM. Yes, Mr. Schumer, I would like to address that question.

I am most familiar with the California situation. It would be hard for me to believe that any of that $290 million is being earned by California banks, nor was it prior to the time of implementation of hold restrictions in California. The survey done there by the State banking department, which has been validated by the Department of Consumer Affairs, is that the banking industry as a whole prior to the regulations was placing holds of four one-hundredths of 1 percent of the items, one out of 2,500 checks.

From my own institution, Wells Fargo Bank, we hold 240 items a day. We have 330 branches and process about 1.3 million checks on a daily basis. That is less than four one-hundredths of 1 percent.

Mr. SCHUMER. Why do you think the rest of the country is doing so much worse than California?

Mr. WILHELM. It is hard for me to answer that. I don't think the California market is necessarily unique. I think there are other markets in the country where the experience is probably similar.

I know that the Houston Clearinghouse Association did a study which ended up with results that were similar to ours. I suspect there are other areas where the results would be similar.

I recognize there are markets, there are pockets of places, where holds are applied on a more nonselective basis. But I think it is not fair to indict the entire industry as having played the float game. That is certainly not the case.

Mr. SCHUMER. Mr. Tomson.

Mr. TOMSON. Mr. Chairman, Mr. Schumer, I think one of the questions that has to be asked when you recite that there is $290 million being made on the float is: Who is paying the bill? I don't think the consumer is necessarily getting the brunt of it.

If you want to hear some more horror stories after the hearing, I would be glad to share with you some of the instances in which our bank has been the victim of float techniques, because these happen to be games going on every day that institutions play on each other, as well.

But if I could have the liberty to go back to your first question for a second——

Mr. SCHUMER. Sure.

Mr. TOMSON. I think you hit on a very important point. You asked, what is it that is being done to put in place better communications systems and techniques and devices?

In our bank in Iowa, we have a small IBM PC in place, which is on line with the Federal Reserve Bank of Chicago's computer, and we have the ability to immediately wire-notify on any return item as we are required to do, $2,500 and over. In order to drive that system, you have to have a piece of software in place.

You could be helpful to us in getting that software in place throughout this country, rather than each of us having to go in and pay an inordinately high price for that software. If we had one piece of software that was capable of being used by 14,000 banks, for example, and it would drive—you can't favor one vendor, certainly—but if it would drive a small PC, we could, as I said in my testimony, have a system that would be as effective as the telephone system used to be.

We need your help to get the communication device in place that is universal.

Mr. SCHUMER. I agree with you. We will have Federal Reserve witnesses here and we can talk to that.

I have one final question, and my time has expired; a short comment.

Chairman ST GERMAIN. Your time has expired and you are going to ask another question?

Mr. SCHUMER. I thought of the question before I got the notice, Mr. Chairman. I will ask for a second round of questions after my colleagues have had a chance.

Chairman ST GERMAIN. We don't want him to leave, do we? He has been fabulous.

Sure, we would like to have you with us.

Mr. Shumway.

Mr. SHUMWAY. Thank you, Mr. Chairman.

Mr. LaFalce said a few moments ago that the real problem, the question we are going to have in this subcommittee, is resolving some of the details of this legislation. It appears that something is going to move, and the specifics of it need to be questioned and perhaps considered in some depth.

I am concerned about preemption, which we have talked about for a few moments. I am concerned about disclosure policies. I am concerned about the applicability of federally mandated holding schedules.

I would like to ask one question that, again, falls in the specific or detail category, but is another area of concern I have, and we have not really talked about it, and that is the matter of crediting interest from the date of deposit or perhaps the date of provisional credit. There has been a lot of discussion as to whether banks should be required to pay interest on those funds deposited by check into interest-bearing accounts as of the date of the deposit. This is particularly true, I suppose, in light of the criticism that has just been voiced again that banks earn interest on the float and consumers should be entitled to some of that interest, as well.

Mr. Wilhelm, I would like you to comment on this point, if you would. It seems to me that crediting accounts with interest from the date of deposit may pose some unreasonable burdens upon institutions. I am concerned we preserve some degree of balance, and that we not tilt it too far in one direction or the other. Obviously, we have to be concerned about the safety and soundness of financial institutions.

Do you have a comment in that regard you would like to share with us?

Mr. WILHELM. Yes, Mr. Shumway.

Clearly, if float is one of the focuses of this subcommittee's interest, and the problem generally, the float from the bank side could not possibly start before the date of provisional credit. That is when the institution has investable funds. In fact, the California law does provide interest credit must be made no later than the date of provisional credit.

In fact, many institutions, as they were doing before we had legislation, do credit from the date of deposit. They do that for competitive reasons or for other business reasons. Not all institutions. But it is not fair, I don't think, to require that institutions in fact have to give their customer interest 2 days before the institution itself has investable funds. That is merely taking the so-called float problem, and instead of being bank float, we now have consumer float with that mechanism.

I think fairness dictates that interest credit be no later than and not mandatory earlier than the date of provisional credit.

Chairman ST GERMAIN. Mr. Shumway, if I may.

Mr. SHUMWAY. I will yield to the chairman.

Chairman ST GERMAIN. The problem—help us out here—and I am sure you want this covered, too, Mr. Shumway—the date of provisional credit, does it vary, or is it pretty standard?

Mr. WILHELM. It is pretty standard. It is a crediting mechanism that exists within the payment system. Most banks know with respect to a particular type of item when they will be granted provisional credit.

This is normally, Mr. Chairman, 1 to 2 days on the vast bulk of items; sometimes 3 on some very special or very, very remote items. But 1 to 2 days would cover it—at least for a major bank—keeping in mind that for more remotely located institutions, the time frame is a little longer. But for a major money center bank, it is 1-day availability on a large percentage of items, 2 days on a very large percentage of items.

Chairman ST GERMAIN. I think what we should do is have the Fed—I see one of their erudite, intelligent, wise representatives in the audience out there—be prepared to assist us with this provisional credit time.

Mr. **Wilhelm**. I would just like to emphasize, that is provisional credit. They get reversed if the item is bounced.

Chairman **St Germain**. But then you don't pay the interest, either.

Mr. **Wilhelm**. Reverse the interest, hopefully.

Chairman **St Germain**. That is what I mean. You don't pay the interest.

Mr. **Wilhelm**. We found in California the banks don't reverse the interest on the bounced items. It is operationally quite a nightmare.

Mr. **Shumway**. Is there any reference in the California law regarding this, Mr. Wilhelm?

Mr. **Wilhelm**. Yes, Mr. Shumway. The legislation states interest shall be credited no later than the date of provisional credit, but not on the date of deposit.

Mr. **Shumway**. Any other panel members?

Mr. Glass?

Mr. **Glass**. I would like to suggest that this basically a—affects the effective interest rate. I would like to encourage you to leaving that to market decisions. The consumers have the option of where they place their interest-earning assets. If the bank wants to pay interest immediately, I would like to see us have that option. If the bank wants to wait until provisional credit is available to them, they should also have that option and let the marketplace decide that.

Mr. **Shumway**. Thank you.

Let me just ask one more question in the time I have left about disclosure of funds availability policies. One proposed disclosure requirement would be that a bank must post a notice specifying the time periods that apply to the availability of funds deposited in its accounts in each location where it accepts deposits.

I have an analysis that was done by the Institute for Strategy Development, and they have analyzed that particular requirement. They say that that requirement is much more comprehensive than other notice requirements. They note that this requirement would adversely affect the operations of shared ATM systems.

I just ask the panel, in general, do any of you have a comment on that particular concern?

Mr. **Wilhelm**. I would like to address that, Mr. Shumway.

There is no question that in the shared ATM systems—and the membership in some of those shared systems is really quite large—to have an adequate disclosure for each participant in the system to be posted at the ATM machine would virtually require in some instances a small catalog of disclosure documents, which I suspect probably would just not be looked at by the consumer. It would be overwhelming.

The way California dealt with this was to provide for a variety of different ways of disclosure, leaving it up to the institutions to pick the ones that were most cost-effective for them. So, although we were permitted to put disclosures on ATM envelopes or post notices at the machines, we were not required to do that as long as we did other types of disclosures, whether they be periodic statement stuffers, as the chairman suggested, some notification on the deposit slip, posting brochures in the branch locations, or handouts at teller stations. All of them are options, but none are required.

There is a type of ongoing summary disclosure that is required, and it is up to the institution to choose the one that is best for its system.

Mr. SHUMWAY. Thank you, gentlemen. My time has expired.

Chairman ST GERMAIN. Mr. Glass, let me ask you this: When you talk about options and the marketplace, if the legislation were to say interest from the day of provisional credit by the Fed, that doesn't stop you from paying interest from date of deposit, does it?

Mr. GLASS. No, it does not.

Chairman ST GERMAIN. Therefore, the market still has an option.

Mr. GLASS. That option it would have, yes.

Chairman ST GERMAIN. Absolutely.

So, if we were to go to date of provisional credit, then you have no problem; right?

Mr. GLASS. I just feel like it would be an unneeded legislation.

Chairman ST GERMAIN. I am sure you would like to see no legislation whatsoever, Mr. Glass. But that is not what will happen.

Mr. Wortley.

Mr. WORTLEY. Thank you, Mr. Chairman.

You know, you folks always amaze me because every time the Congress proposes a change, you rush up here and you shout and shudder and tell us that we are undermining the whole financial system. Every time you propose something, it is kind of like motherhood for the good of mankind.

Here we are today talking about funds availability that really affects every single depositor who walks into your bank. The stories are monumental about what happens concerning funds availability.

College kids—what you do to college kids is unconscionable. I have had two daughters who have gone to college in this town, to different colleges, and they have their funds in different banks, and they go through regular traumas trying to draw on their accounts.

I had an incident within the past 6 months that was absolutely incredible. My daughter was paid—accounts in this town, in this city. She put it in the bank and couldn't get her money for 2 weeks—2 weeks. That is not fair. You know it isn't fair. But it goes on. These stories go on all the time.

You know, for a group of individuals who have the solutions to so many things—you think you could make international loans, and you think you can go out and underwrite insurance, and you think you can go out and sell securities and mutual funds, and you still haven't remedied the problem of clearing funds.

The simplest thing, the thing you do all the time, 5 days a week, I just don't understand why you have to lean on those funds and hold on to them for so long.

I come from upstate New York, and I must tell you in upstate New York things are a lot better than they are here in Washington and in downstate, some of the money center areas. I am rather pleased with the way they are in upstate New York.

But I would like to ask—for instance, Mr. Tomson, you represent small banks, and I can understand your clearings may not go as fast as they do in some of the metro centers. What experience have your member banks had with losses due to actual fraud in this area?

Mr. TOMSON. I don't have any——

Mr. WORTLEY. Your smaller banks hold on to the funds a lot longer, I know. You don't make them available anywhere near as fast as they do in the larger States.

Mr. TOMSON. We adhere to the Federal Reserve availability schedule at our bank.

Mr. WORTLEY. Maybe your bank, but let's talk about generally.

Mr. TOMSON. Our survey, which was conducted—you said you liked things in upstate New York. I think you are probably from a rural area and you must do business with smaller banks. One of the reasons you must like it is because you get fair treatment there.

Mr. WORTLEY. Let me say this to you, without mentioning the names of the banks. I come from the Syracuse, NY, area, and I will tell you I have a little business. We have seven or eight offices around here and there. And in the city of Syracuse area, funds are available overnight. But 3 miles down the road—3 miles down the road in a small-size independent bank—you have to wait 4 days before the funds are available.

Mr. TOMSON. I wouldn't bank 3 miles down the road if that was the case.

Mr. WORTLEY. Well, I have a branch there, and we can't very well run back and forth at 4 o'clock every afternoon picking up funds.

Mr. TOMSON. In the State of Iowa where I do have experience, we have a statewide RCPC, and I can get the same availability through the RCPC and Federal Reserve that you can if you are doing business in Des Moines. I don't know of any banks in our State that are withholding deposits for an inordinate amount of time.

Mr. WORTLEY. What do you call inordinate?

Mr. TOMSON. You have to adhere to the Federal Reserve availability schedule and put it on the wall for everybody to see and live with it.

Mr. WORTLEY. Do you put it up there?

Mr. TOMSON. I don't put it up, but we make it available for all our accounts that want to see it. We have it available. We don't have it posted at the present time.

Mr. WORTLEY. When a person opens an account in your bank, do you advise him of the funds availability schedule?

Mr. TOMSON. Presently on a consumer account, we have no withholding policies in our bank. If it is a very large check drawn on an out-of-State bank, we may telephone and find out if it is good. If we know the individual and we know the employer, for example, which is 9 cases out of 10, or more than that, we don't adhere to any withholding.

Mr. WORTLEY. You should be the pacesetter among the banks, independent banks.

Mr. TOMSON. Well, I suppose you might believe I ride a great white horse. That is not the case. We have opportunities out in the country because we deal with smaller institutions and smaller communities. And perhaps we are not as punitive in these things as happens to be the case in the larger cities.

I am surprised to have you feel that the smaller banks are much more deliberate in withholding funds than the larger banks. I don't believe that to be the case. I think the vast majority of——

Mr. **Wortley**. It is in our area; I will tell you that.

Mr. **Tomson**. Well, competition can take care of part of that.

Mr. **Wortley**. Maybe that is the problem. There isn't enough competition out there in the marketplace, and particularly in the smaller communities where there is a single bank, for example, in a community.

Mr. **Tomson**. In a community of 9,000, we have three banks, a savings and loan, and a credit union. Competition is pretty keen. And within 15 miles, there are several more banks. So, I feel in our State there is 650 banks and I don't know how many offices, plus an array of credit unions and savings and loans.

I don't think we are that much different from most of the other States in this country. There is plenty of competition out there today, and if you don't like doing business in our town you can walk across the street to Edward R. Jones and open an account with them, and deal through one of the brokerage houses.

Mr. **Wortley**. My time is expired. I thank you very much.

Thank you, Mr. Chairman.

Chairman **St Germain**. Thank you, Mr. Wortley.

Mr. Dreier.

Mr. **Dreier**. Thank you very much, Mr. Chairman.

I enjoyed the testimony.

Mr. Wilhelm mentioned something in response to your comment on provisional credit, Mr. Chairman, that was rather shocking. He mentioned it to me earlier when we discussed this in our offices.

I wonder if you could tell us what the losses to California institutions have been by not reversing the interest credited to those accounts.

Mr. **Wilhelm**. Mr. Dreier, I don't have statewide figures on that.

Mr. **Dreier**. What about Wells Fargo?

Mr. **Wilhelm**. In Wells Fargo's situation, I have numbers that may shed light on this—not so much specifically on the losses in reversal of interest credit, but looking at the so-called float arrangement itself. As I mentioned, our institution holds about 240 items a day. Those are the large items, generally about $2.2 million in the aggregate. On the return item side, we are getting anywhere from 8,000 to 11,000 return items back each day, representing something in excess of $5.5 million.

On those items, there is a reverse float, if you will, in which there is the delay between when our provisional credit is reversed in the payment system and we have an opportunity to reverse the interest credit to the consumer, or at least reverse the deposit credit that was given. It doesn't take a lot of mathematical sophistication to realize that at least Wells Fargo—and I think it is true of most California banks—are on the losing end of that particular float game.

So——

Mr. **Dreier**. So, in other words, institutions are being penalized with this present system, actually?

Mr. **Wilhelm**. Certainly, if you have a selective hold policy, the chances are that you are not making money on float. I can say that for assurance.

The other side is really the losses you take on bad checks. I know Mr. Wortley asked that question earlier. We have done a sample at Wells Fargo in which we tried to identify just the losses we took on checks which could have been avoided had we placed a hold in accordance with the California rules. After all, we are not very aggressive in placing holds. We found that on an annual basis, going back the last 3 years, we have lost a little over $2 million a year on those items, which we could have avoided had we been aggressive on placing holds. That constitutes close to 25 percent of our annual losses attributable to the operations side of the bank.

Now, obviously, we have made a decision that at least at this level it is still worth it for us to take those losses and not aggravate our customers. But the suggestion by some that that is an insignificant number is just not true.

Mr. **Dreier**. Mr. Schumer earlier began discussing the question of technological advancement in that very archaic return process which now exists, and you reached for the microphone when his time expired, and I thought you might elucidate the committee on the question.

Mr. Wylie earlier mentioned the proposal that he has to have 1 day on local banks and 3 days on out-of-community banks.

I am wondering if setting—I don't want to call that arbitrary—but setting a certain standard isn't the way to encourage technological advances, or if the advances will take place with economic incentives alone?

Mr. **Wilhelm**. I think it is clearly the position of the CBA that there is definitely some value to setting some goals for the Fed to achieve to improve this whole system and allow us all to have a certainty about return items that would enable us to hold items when we choose to do so for much shorter time.

We have some concern about the 1-day or 3-day schedule as long as you have paper checks that have to be presented for payment. I don't see that change in any time in the next 5 years.

Apart from the return side of it, let's assume we can streamline that and improve it. I think as long as you have a paper check, 1, 3 days is probably impossible to attain technologically in the next 5 years.

When the day comes that we have check truncation and those pieces of paper stop moving around the country, perhaps we can come closer to that.

Mr. **Dreier**. What steps are being taken now for down the road?

You are talking about a ways away, that one and three not being attainable, et cetera.

What is conceivable within the next 5 years?

Mr. **Wilhelm**. There are a few things going on out there. We have heard reference today to the Fed's regulation J, which really only applies to items presented for payment through the Fed, and requires direct notification for any item over $2500 being sent back. That is a step forward. It has got teeth in it.

Those items represent a large part of the return dollars, but a small part of the return items themselves.

Mr. Glass has mentioned the pilot study that will take place pretty soon. I know our bank is very enthusiastic about that.

The California Bankers Clearinghouse Association, which is an association of major clearing banks in California, has been quite interested in automating the return process by using existing technology to re-encode items so they can go through the high-speed micro-sorting and transportation stream along with the items being presented for payment. I think that that offers real promise.

Although I appreciate the chairman's impatience with how long it takes these things to get in place, I do think that that particular study offers some promise for some relatively short-term improvements if the results of that pilot are favorable. We sure hope they are.

Mr. **Dreier**. One of the items in the chairman's bill that sounds very reasonable on the surface is same-day credit for cash deposits. I understand you have some concern about that.

Mr. **Wilhelm**. I am glad you asked that, Mr. Dreier, because this is something that is not obvious, I think, to most people.

You would presume that cash is cash and it should be available as soon as you give it to the bank. Unfortunately, banks don't quite operate that way, and it is not because they want to keep their customers from getting their currency back.

The UCC, in virtually every State, provides today that the availability of a cash deposit shall be the opening of the next business day. That is primarily because the bank really has to verify the deposit, post the entries, update the customer's file, which would not seem like a major problem when you are talking about a unit bank situation.

But certainly when you get to environments where you have multibranch systems, ATM networks, the potential for fraud, for a customer to go into another one of your branches and say, "I made a $5,000 deposit at branch A and I am in branch B now; I forgot to hold back a certain amount; I want to get it now," is of much concern. It is going to be very difficult to verify that in fact that deposit was made because, after all, we don't want tellers making final entries to a consumer's account.

Frankly, although I appreciate the concern, I don't think it is expecting too much of a consumer who leaves a cash deposit to hold back enough to last for the rest of the day. That is all we would request—opening business the next morning. That is what we are used to dealing with under UCC, and we have been doing that a long time.

Mr. **Dreier**. You would recommend 1 day on cash deposits?

Mr. **Wilhelm**. It is not even a 1-day hold. If you come in at 3 in the afternoon, we say it is available the next morning, but we do our processing and proofing and verification during the after-business hours. We need that time to do the accounting. That is what it amounts to, really.

Mr. **Dreier**. Thank you very much.

Thank you, Mr. Chairman.

Chairman **St Germain**. I'm sorry, Mr. Wilhelm, you don't convince me on that one. The tellers don't have telephones?

Say I put $5,000 in cash in the Dreier branch and then I find out that—I am in the produce business and I can get a truckload of oranges for $1,000 that I would have to ordinarily pay $2,000 for, but the fellow needs the cash. Can't the Schumer branch call the Dreier branch and say, "Is it true that Mr. Dreier put $5,000 in?" "Yes." You know.

Mr. **Wilhelm**. Absolutely, Mr. Chairman. I think that is what would occur in most cases.

I think a responsible bank should try to help its customer in that way. But do not require as a matter of law that they have to provide it.

Chairman **St Germain**. They should tell the consumer, and the wise thing would be not to go to a bank that has branches, to go to a nice, small bank like Mr. Tomson probably operates, then you won't have that problem.

Mr. **Wilhelm**. I can't speak for Mr. Tomson.

Chairman **St Germain**. Forget the biggies; go to a small one.

Let me ask you a question about checking here. John Doe deposits $5,000 in your bank, a check for $5,000, and 2 or 3 days later he writes checks on it. Two weeks later the check is returned for nonsufficient funds.

You have been paying interest on the balance after 2 days, provisional credit under the California law, isn't that correct?

Mr. **Wilhelm**. That is right.

Chairman **St Germain**. Now, you say you don't withdraw that interest. You say it is too complicated a process to withdraw the interest. You feel it is cheaper, more reasonable, if you just don't bother withdrawing the interest that might have been posted on that account.

Mr. **Wilhelm**. That is the experience that is reported to me by other banks in California.

Chairman **St Germain**. You say Wells Fargo has that problem as well; right?

Mr. **Wilhelm**. Right.

Chairman **St Germain**. However, that check, the lady who deposited the $5,000 check that is returned, is there any charge to that individual for having deposited a check that had non-sufficient funds?

Mr. **Wilhelm**. In that situation in our bank, no; in some banks they would charge that.

Chairman **St Germain**. Some banks, most banks, or a lot of banks?

Mr. **Wilhelm**. I'm sorry, Mr. Chairman, I don't know the exact figures.

Chairman **St Germain**. Mr. Glass, do we know that one?

Mr. **Glass**. Well, Mr. Chairman——

Chairman **St Germain**. Isn't it a fact that when you deposit a check and it is returned for insufficient funds that you are assessed a penalty for that?

Mr. **Glass**. In our bank, that is correct.

Chairman **St Germain**. How much is that penalty, Mr. Glass?

Mr. **Glass**. In the first case it is $18.

Chairman **St Germain**. Eighteen dollars.

So you see, Mr. Wilhelm, a lot of banks assess that charge.

By the way, if that individual has written checks after the provisional date is exceeded and five of those checks bounce, checks he or she has written based on the deposit, are they charged for those return checks as well, for insufficient fund checks?

Mr. GLASS. At our bank we charge for one item per day.

Chairman ST GERMAIN. So?

Mr. GLASS. So it could be multiple-return items.

Chairman ST GERMAIN. If there were five returns because of that one uncollectable check, that would be $18 for the uncollectable and five other transactions that were returned because of insufficient funds as a result of that being uncollectable. So we are up to $108; right?

Mr. GLASS. We have a product in our bank where we allow a customer *x* number of return items—I forget how many it is; I think it is five—included in their service charge for the account. And they are not charged for those return items.

So, again, it would be——

Chairman ST GERMAIN. Remember Mrs. Cody in Boston charged $296 for those checks that bounced on her because they didn't credit her account, even the cash that was placed in that account.

That was a tragic situation, wouldn't you say, Mr. Glass? Wouldn't you agree? Pretty expensive for Mrs. Cody.

Mr. GLASS. In her case, yes, but on return checks there is a cost incurred by banks for handling.

Chairman ST GERMAIN. What is the average cost for a return check to a bank?

Mr. GLASS. I couldn't answer that.

Chairman ST GERMAIN. I can answer it for you. It is 36 cents. You charge $18. That is a pretty good margin of profit, isn't it?

The Fed tells us it is 36 cents. Am I right? That is correct. Thirty six cents and you get 18 bucks. That is a good business.

Now, let me ask you this, Mr. Glass, Mr. Tomson, and Mr. Wilhelm, do any of you in your institutions sell cashier's checks, certified checks, or money orders?

Mr. Glass?

Mr. GLASS. Yes, sir.

Chairman ST GERMAIN. How much do you charge for a cashier's check, say, for $1,000?

Mr. GLASS. I don't know that charge.

Chairman ST GERMAIN. Mr. Tomson, do you know?

Mr. TOMSON. I don't know offhand what our charges are.

We, I believe, have a flat charge in our bank of about $4 or $5 for a cashier's check, money orders are much less, only amounts up to $250.

Chairman ST GERMAIN. Mr. Wilhelm?

Mr. WILHELM. I believe ours is also a flat charge regardless of the amount. I think it is $5.

Mr. GANNON. May I respond to them, even though I am not a banker obviously, by saying from what I have seen in Rhode Island and personal experience, it is $15 to $30. As you well know, in terms of the 36 cents banks—it accounts for 30 percent of the fees that banks receive, which is quite a sum of money.

Chairman ST GERMAIN. You mean on return checks?

Mr. GANNON. Yes.

Chairman ST GERMAIN. I want to get back to cashier's checks.

Mr. Wilhelm, what do you sell, certified or cashier's checks?

Mr. WILHELM. Both.

Chairman ST GERMAIN. Mr. Tomson?

Mr. TOMSON. We do both.

Chairman ST GERMAIN. Mr. Glass?

Mr. GLASS. Both.

Chairman ST GERMAIN. If I come into your bank with a cashier's check, Mr. Glass, or certified check, and I deposit that check, how long does it take before I can draw on that account?

Mr. GLASS. In our bank it would probably be immediate because there would be no hold. We basically do not place holds on checks as long as you have an established account or you are known by the teller.

Chairman ST GERMAIN. I just moved to—where you from again?

Mr. GLASS. Memphis, TN.

Chairman ST GERMAIN. Memphis, OK.

I come to Memphis from Rhode Island. I've sold my house and I've decided, hey, I want to buy a house when I get to Memphis. So I got myself a certified check and brought a cashier's check from the Fleet Bank or Citizens Bank, one of the big banks in Rhode Island. All right?

I come in and I say, "I am Fred Gannon, and I have just been transferred here by my company. I am depositing a cashier's check for $50,000."

The next morning I see the house I want, the house of my dreams, I give the realtor $10,000 as a binder and he goes to the bank because his customer and he both want that money.

Does he get that money right away?

Mr. GLASS. Yes.

Chairman ST GERMAIN. Even though I have never had an account there before?

Mr. GLASS. We would do our best to verify who you are and give you an immediate credit for those funds.

Chairman ST GERMAIN. Mr. Tomson, same set of circumstances.

Mr. TOMSON. Same thing. The rule is to know your endorser. If we know you, there would be absolutely no problem, or if somebody will vouch for you. If we don't know you, we will do the best we can to identify you and give you immediate credit.

Chairman ST GERMAIN. Mr. Wilhelm.

Mr. WILHELM. Yes; the same thing would take place in California.

I might add, Mr. Chairman, that California law, by regulation, would require that we have to give next-day availability at the latest, so that the maximum hold we could put on it would only be to the end of the day.

Chairman ST GERMAIN. There is a reason for asking this question. I have a letter.

> DEAR CONGRESSMAN ST GERMAIN: Last week my daughter moved from Bloomington, IN, to Boston, MA. She withdrew funds from the Indiana University Credit Union by means of a cashier's check.
>
> Yesterday she called me saying she deposited the check at the Boston Five Cents Savings Bank at 696 Center Street, Jamaica Place, Boston, MA, 02130. She was told she could not use the money until the check cleared an interval of 15 days.
>
> She is now in a strange town with about $50 in her pocket, certainly not enough to last 15 days.

Mr. Glass, Mr. Tomson and Mr. Wilhelm, do you all agree that that is an atrocity?

Mr. WILHELM. Yes.

Chairman ST GERMAIN. Does anyone disagree with me that that was a little improper?

Mr. GLASS. Isn't the institution a savings bank?

Chairman ST GERMAIN. Yes.

Mr. GLASS. I would agree.

Chairman ST GERMAIN. Mr. Glass, don't take umbrage at that, because we have got commercial banks that have done the same thing.

Your three institutions, jeepers-creepers, don't put the halo over your head yet, the ABA, I mean.

Mr. GLASS. I did not intend to do that, sir.

Chairman ST GERMAIN. I'm glad you didn't.

So guess what, Mr. Still, my general counsel, wrote to the president of the bank.

> You recall the pleasure of serving on the Rhode Island Bankers Association panel on the topic of increasing time required for the checks to clear. Enclosed is correspondence from Robert Welty, he is the one who wrote about his daughter. Considering the time involved, I would appreciate your comments on this most unfortunate situation.

Letter dated September 19, 1983.

It took 15 days for that cashier's check to clear. Now 2 years have passed, and Mr. Spiller's response still has not arrived.

I just thought the record should contain that little factual situation.

Here is a good one. A copy editor at the Chicago Tribune—your people are terrific, I mean, really.

"Last Thursday, September 19, I deposited a check for $5,000 drawn on the American National Bank of Chicago"—that is not a savings bank, Mr. Glass—"into my account at First National Bank of Chicago, via a cash teller machine." That is not a savings bank either.

"Yesterday, September 24, 5 days later, when I attempted to withdraw $50 with my cash card, the machine told me that I could not withdraw any funds. I called the bank. They told me they had put a 10-day hold not only on my check but on everything in my account.

"First, during the 10-day hold, the company that issued the check told me the check cleared its account September 23. Second, why deny me use of other funds in my account?"

Mr. Elsner had over $1,100 in the account before depositing the $5,000 check.

Mr. Glass, that is not a savings bank. How would you justify that one?

Mr. GLASS. I wouldn't attempt to justify it.

Chairman ST GERMAIN. Mr. Tomson, could you justify that one?

Mr. TOMSON. No, sir.

Chairman ST GERMAIN. Mr. Wilhelm?

Mr. WILHELM. Absolutely not, sir.

Chairman ST GERMAIN. Now, gentlemen, you came here to give us statistics about how wonderful the small percentage of holds placed on checks is. That didn't help Mr. Elsner and Mr. Welt.

That is why we are here considering legislative action. It is not because we don't like you. Do you understand now?

We want you to be liked. You see? You will be liked; if you all do the right thing. You won't be tainted by some unscrupulous people that take advantage of customers.

Senator Gannon, the trade associations assert that there is a strong correlation between bad check losses and funds availability requirements. You seem to contradict this claim.

On page 5 of your statement, you quote a State banking commissioner study that said there is no correlation between the banks' hold policy and the actual dollar losses experienced by the bank.

Would you be kind enough to explain the statement a little further, please?

Mr. **Gannon**. Certainly, Mr. Chairman.

I think, whether it be in the State of Massachusetts or in the State of Rhode Island where we hear testimony, there was no direct correlation between the hold policies and the fact that there was a lack of policies in many cases with many banks.

During the testimony, and certainly that which was presented here this morning, we hear of the various banks and associations that have said that in fact we have certain policies relative to holds and these are not the average day-to-day activities, but as you just mentioned, Mr. Chairman, it goes on day in and day out.

So, in fact, what we decided to do was put in place ceilings, and again working with the industry and the banking members, we found that they could live with ceilings, and I hear over and over again this morning that such legislation, whether it be at a Federal level or State level, is not warranted because they are actually doing these things.

In fact, all the cases you presented and certainly the ones I have heard of, numerous cases, show otherwise throughout the country.

You will see, if I may, Mr. Chairman, in the future, although six States now have legislation, at least 12 others are looking at similar legislation, and I am sure there will be more in the future.

Chairman **St Germain**. Are you familiar, Senator Gannon, with what the experience has been in New York?

Let me ask Mr. Wilhelm. Yours was a statutory enactment on funds availability in California, right?

Mr. **Wilhelm**. Statutory enactment that delegated to the regulators the setting of the schedule.

Chairman **St Germain**. How long have the rates been in effect in California?

Mr. **Wilhelm**. Just over 1 year, Mr. Chairman.

Chairman **St Germain**. Have they done a study on whether or not this has indeed increased the number of bad check losses?

Mr. **Wilhelm**. Mr. Chairman, the banking department has not done a study.

I have informally polled banks in California, because of my responsibilities on this issue back there. I can tell you at this point that I am happy to report that so far we have not noticed any significant increase in losses that are the result of the mandated hold periods in California, but there is a caveat with that.

First of all, so few items were being subjected to holds that this has not caused institutions to place more holds than they were placing before.

As a consequence, it is a little difficult to measure and a little too soon to know whether the fraud artists out there now know which particular categories present opportunities for kiting. The risk to the banks has increased some because there has been an increased exposure on some of the categories.

Chairman St Germain. The State of New York, I understand, has done a survey after 2 years; is that not correct?

[A new release on this survey was subsequently received for inclusion in the record:]

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BANKING SUPERINTENDENT REPORTS NO SIGNIFICANT LOSSES DUE TO CHECK AVAILABILITY REGULATION

NEW YORK, June 3, 1985--Jill M. Considine, New York State Superintendent of Banks, announced the results of a Banking Department survey on losses incurred by banks due to the State Banking Board's regulation (Part 34) which set time limits on when banks must make the funds from deposited checks available to their customers.

Superintendent Considine stated, "More than 81% (130 out of 160) of the reporting institutions indicated that they had suffered no losses whatsoever during the last six months of 1984 due to the time limits in the Banking Board's regulation. Of those institutions that did report losses for that time period, the average loss was $1,811.

"It is therefore clear that the Banking Board's regulation has not had any significant adverse effects on banking institutions while at the same time it has provided important benefits to consumers. I hope that these findings will encourage those 23 federally chartered thrift institutions who are not in conformance with the Banking Board's regulation to reconsider their policies and comply."

Mr. Wilhelm. I think that is right.

Chairman St Germain. I think my staff informs me that the New York experience has been that they have not found any significant decrease in losses there either. So fortunately, to date, that does not seem to be a correlation or an encouragement to the nasty people to function in this area as a result of the delayed funds availability regulation in New York.

Mr. Wilhelm. I think that is true. An institution's relative experience with losses on bad checks is not directly related to the amount of time that you need to have, if you want to place a hold, if you perceive an item is risky.

The fact that your losses may be low as an institution doesn't mean you should shorten the hold periods to find out if the item is bad. It may affect your decision as to how often you place a hold but you don't want it to be a pointless act.

There is no sense placing a hold unless you have some reasonable expectation that you will find out that it has bounced before the hold has expired.

Chairman St Germain. You discuss the advantage of electronic banking and say it is so fast and, therefore, not subject to the delayed funds availability problem.

Would you help me out with the information, Mr. Glass?

If an employer's bank electronically transmits funds to an employee's account in a financial institution, how long does it take the employee's bank to credit the individual employee account?

Mr. Glass. This is referring to the automated clearinghouse, and those funds would be credited to the account the day the bank receives the funds electronically.

Chairman St Germain. There is a very short delay, if any?

Mr. Glass. Correct.

Chairman St Germain. What is the hold policy of Wells Fargo as of now?

Mr. Wilhelm. Generally speaking, we don't place holds unless there is something suspicious about the nature of the deposit. When we do place holds, they tend to be on larger items.

The length of the hold period is pretty much in accordance with the maximum hold period in the California regulation. On out-of-State funds, it is 1 day shorter than we would be permitted by State law.

Chairman St Germain. You are telling us that there is relatively no hold whatsoever on checks, say, of $2,500 or less?

Mr. Wilhelm. That is pretty accurate. In California, we have found since the regulations went into place, the California scheme provides an exception for the hold schedule for items in excess of $2,500; many banks, in order to alleviate their compliance problems have adopted a policy that they won't hold checks under $2,500.

Chairman St Germain. I just want to talk about Wells Fargo at this point.

In the same city, if the check is within the same city as the branch, is the hold for 1-day or the next business day?

Mr. Wilhelm. Most likely a maximum 2-day hold, if it is in the same city.

Chairman St Germain. Elsewhere in the State?

Mr. Wilhelm. For a major bank, today it is probably going to be 3 days, although that is soon going to change and be 2 days.

If it is not a major bank, we can impose a hold up to 4 days on it.

Chairman St Germain. Out of State?

Mr. Wilhelm. For Wells Fargo, the maximum hold period, on an item drawn on an out-of-State bank would be 7 days.

For an out-of-State thrift, however, we do take advantage of the California regulations and use the 9 days that were permitted under those regulations. Those items take longer to get back.

Chairman St Germain. This hold period has been in effect for how long?

The reason I ask is, I have a study here that was made in California, a survey done in 1983 by the San Francisco Consumer Action. Are you familiar with that?

Mr. Wilhelm. I have seen it, yes, sir.

Chairman St Germain. A bank, Almeda First, Mitsubishi, Wells Fargo, same city, 4 to 6 business days—is that wrong?

Mr. Wilhelm. One of the problems there is when the consumer groups did the polling, they sometimes talked to branch personnel that didn't have a correct understanding of the hold schedule because they placed holds so infrequently; there was confusion as to how the various banks measured their hold periods.

At Wells Fargo at that time, a 3-day hold period to us included the day of deposit, so when we said 3 days it really meant 2 days in the nomenclature that other people were using. Those distinctions didn't get reflected.

Chairman St Germain. You just verified something. I am so sorry the rest of the committee is not here because you said they talked to somebody at a branch that didn't understand the hold policy.

Do you realize how confusing that is for the customer?

Forget the consumer groups. Now, you are a customer and you want to know. You felt that perhaps the catalog at the ATM would be a little confusing to the depositors as well, right?

Mr. Wilhelm. I am concerned about that and how the disclosures fit in with California's own scheme. We don't want to be giving consumers two sets of disclosures.

Chairman St Germain. We want to avoid any duplicative requirements.

As far as preemption, if we feel that that which we are doing is more beneficial to the consumer than that which the State is doing, we would preempt, but if the State is doing more for the consumer than we are, we would not preempt.

That is pretty fair?

Mr. Wilhelm. As a philosophical position, I can't agree.

It tends to be resolved in a class action lawsuit and that is an expensive way to get a decision.

Chairman St Germain. We are going to look at that as well.

Senator?

Mr. Gannon. Obviously, you hit the nail on the head when you said in fact what happens when the consumer, John or Mary Doe, calls the bank, and is given the wrong information.

We did a small survey and said that we have a personal check from Florida. Can we deposit it in a particular bank? We called two branches. One individual said it would be deposited to that person's account that day; another one said at least 2 weeks, same bank, a different branch.

You are very correct in saying what happens to the consumer when they call. They are not talking to the president of the bank, or these gentlemen today, in terms of policies. The consumer awareness of these issues is almost nil and that has been the problem.

I would like to reference the fact that at the end of my particular statement that has been given to you, Mr. Chairman, there are a number of charts which break down the various State laws which six States have already enacted. They are broken down into the various components and also disclosure requirements, be it at a conspicuous place or writing to the various customers, or when a new person opens up an account.

I can't help but echo your statements, and at times, during the course of the morning, I have had to bite my tongue.

Mr. Wortley said, referencing the panel, you are here before us telling us how bad this is. Today I am in the minority, and I am certainly not a member of the banking industry; I don't have a pin-striped suit; I can't afford one today. In all due respect, the fact is, I am not a member of the banking industry, and certainly want to convey the message from the consumers' perspective and not the industry.

All too often, the consumer, the person, John Q. Citizen, out there doesn't understand these policies. It is our responsibility. We are policymakers.

I have to separate myself from this panel in the sense that I also serve as a policymaker, and we serve our constituencies and that is to whom we have to address these issues, not with the Board.

Chairman ST GERMAIN. Messrs. Ryan, Williams, Wilhelm, Tomson, and Glass are all here with a desire to serve their constituencies, as well. The only difference is that they came here today to find out how they could better serve their constituency and to help us to help them better serve their constituency. They bring up some legitimate concerns that we certainly want to address.

We have with us a very distinguished member of our committee from the nearby State of Delaware. We share something—population and size. He is not on the subcommittee, but on the full committee. Because of his interest in these matters, he has been spending a lot of time at our hearings.

Mr. CARPER. We may be a small State, but some of our legislators do wear pin-striped suits.

I commend you for these hearings today and I want to thank our witnesses for their testimony. I want to thank Mr. Ryan and Mr. Williams, who have not had much opportunity to comment.

Is there anything you want to get off your chests, gentlemen?

Seeing that you don't, let me go to an issue raised earlier. Mr. Wortley, in his testimony, outlined a situation where his daughters were attempting to deposit money and were denied availability of those funds for several weeks. The chairman read a letter from an irate father whose daughter tried to go to school in Boston and had some difficulties there.

What should be done to remedy those kinds of situations, Mr. Wilhelm?

Mr. **Wilhelm**. There is a feeling at the Consumer Bankers Association, that the provisions of the chairman's bill that will have the greatest long-term impact on that problem are the disclosure provisions and the provision to mandate that the Fed, with certainly the help of the industry, devise an automated system for returning bad checks; that in and of itself, if a bank of deposit knows with a certainty——

Mr. **Carper**. Let me change my question.

What should we do in the Congress to remedy these kinds of clearly abusive situations? What should we do?

Mr. **Wilhelm**. If H.R. 2443 is the vehicle, the section 3 with regard to the Fed and the disclosure provisions will go the furthest toward solving the problem out there.

The hold schedule is really addressing the symptom and not the cause, and to a certain extent that will place some financial institutions at a risk for things over which they have no control in terms of the return process. Improving the return item process will, in fact, enable them to lower holds without any problem, because they will know with mere certainty when the item must come back.

Mr. **Carper**. What should the Congress do to remedy those kinds of abuses?

Mr. **Tomson**. My feeling is that you should, first of all, counsel very closely with the Federal Reserve System. They are involved deeply in the payments mechanism, and they are in the process of stepping up regulation J. I would ask them what teeth they need to deal with this problem through regulation and, first of all, see if you can remedy it by helping them improve on the regulation, improve on the communication devices that are being put in place, and determine how—what could be done effectively to bring the $2,500 limit down to a lower level so it would be more inclusive and have more benefit to the consumer.

Mr. **Carper**. Mr. Glass, same question.

Mr. **Glass**. I would ask that you eliminate the need for the return item to return the same trail that it came, allow a direct return to the bank of first deposit.

Mr. **Carper**. In your judgment, that requires congressional action?

Mr. **Glass**. The current procedure is required under the UCC Code, so that has to be amended.

Mr. **Carper**. The question of, in California—you are from California, are you not?

Mr. **Wilhelm**. Yes, sir.

Mr. **Carper**. When your legislature put in law its funds availability legislation, did they spell out in that legislation the timetable in terms of days? Was it actually legislated to days, or was that not delegated?

Mr. **Wilhelm**. That was delegated to the financial institution regulators.

Mr. **Gannon**. We have enacted similar legislation. Both Rhode Island and Connecticut statutorily required it—certain days.

Mr. **Carper**. You spelled it out in statute?

Mr. **Gannon**. That is correct.

Mr. **Carper**. Mr. Wilhelm, I presume you think that we should delegate—Congress turn that over to some agency?

Mr. **Wilhelm**. That would be the preference.

The answer why is really as a result of the experience we have had in California, because it has been in the regulatory arena. We have been able to have rather prompt oversight hearings and done some fine tuning that will result in changes beneficial to both consumers and banks, and will be an ongoing process. It will be looked at on an annual basis, and even more frequently if problems are discovered.

The concern with this stuff being embedded in legislation, is in getting a legislative body to look at it; it might be important in terms of industry but not important to Congress. It is a flexible arena to make sure all interests are protected.

Mr. **Gannon**. Somewhat the same answer in the first part, because it was in the regulatory arena prior to this, we felt—all the cases that were brought before us—we felt we should take some actions at this point and put it in terms of statutes.

In terms of fine-tuning technically, I agree in terms of attempting to address that particular problem. However, I must reiterate, we worked with the industry and they, in fact, helped to design some of the ceilings we have put in the statute.

Mr. **Carper**. Thank you, Mr. Chairman.

Chairman **St Germain**. Gentlemen, we, at this point, have the advantage of the California, Connecticut, and Rhode Island now 2-year experience. That is why we can fine tune with ultimate precision, with the precision of a surgeon.

I am not asking a question, but making a statement, Mr. Wilhelm.

In 1978, I asked the Fed to issue some regulations on this, and last year again I said, "It has been 6 years and you have not done anything." Now here we are a year later, also 7 years later, and they have not done anything.

There are many of us who have decided we are sick and tired of waiting for the regulators to write some regulations, because they have had the authority all along. They don't need any statutory authority. They just haven't moved off their you-know-whats, and that is why we are going to do it by statute here.

Again, Mr. Glass, did I ask—which one of you didn't know what the charge was for a bounced check? You, Mr. Wilhelm?

Mr. **Wilhelm**. I know what we charge when the customer writes a check on his own account for insufficient funds. I think our charge for a bounced check is $10.

Chairman **St Germain**. $10?

Mr. **Wilhelm**. Yes, sir.

Chairman **St Germain**. Of course, if you find that that is erroneous, you will get back to me, because that seems like one of the cheapest bounced check charges in the country.

Mr. **Wilhelm**. Most are in the $10 to $15 range.

Mr. **Tomson**. Ours run around $5; and we have, I believe, a $15-a-day maximum charge, and no charge to a return check to a customer where it does not involve an overdraft.

Mr. **Glass**. $18.

Chairman **St Germain**. Gentlemen, we want to express our deep appreciation to you. We will probably have a few written questions. I have already asked Mr. Glass to provide us with the cost of that gorgeous publication. It is so patriotic—red, white and blue. Look at that. Jeepers. Isn't that gorgeous. I bet the Fed is jealous when they see this.

The subcommittee is going to be in recess until 10 o'clock tomorrow morning, at which time we will hear from the Federal Reserve Board, and then from a panel of consumer groups.

We want to thank each and every one of you for your assistance.

[Whereupon, at 1:05 p.m., the subcommittee recessed, to reconvene at 10 a.m., the following day, Thursday, October 10, 1985.]

[Letters of invitation to the witnesses follow:]

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

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OF THE
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NINETY-NINTH CONGRESS
WASHINGTON, DC 20515

October 2, 1985

Mr. Fred Mutz
Senior Federal Legislative Representative
American Bankers Association
1120 Ct. Ave., N.W.
Washington, D.C. 20036

Dear Mr. Mutz:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. A represenative from your association is requested to appear before this Subcommittee on October 9th, 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

The rules of the House Banking Committee require that you deliver 175 copies of your prepared statement to Room B303 Rayburn by 12:00 noon the day before your scheduled appearance. Your prepared statement will be included in its entirety in the hearing record, and if delivered to the Subcommittee by the time specified, it will be distributed to all Members of the Subcommittee in advance of the hearing. To enable all Subcommittee Members sufficient time for questioning, your oral presentation of your testimony will be limited to five minutes.

Sincerely,

Fernand J. St Germain
Chairman

[illegible]

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NINETY-NINTH CONGRESS
WASHINGTON, DC 20515

[illegible]

October 2, 1985

Mr. O.J. Thomson
Chairman
Bank Operations Committee
Independent Bankers Association of America
1625 Mass. Ave., N.W.
Washington, D.C. 20036

Dear Mr. Thomson:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 9th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Fernand J. St Germain
Chairman

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NINETY-NINTH CONGRESS
WASHINGTON, DC 20515

October 2, 1985

Mr. Greg Wilhelm
V.P., Wells Fargo Bank
Consumer Bankers Association
1300 North Seventeenth Street, Suite 1200
Arlington, Va. 22209

Dear Mr. Wilhelm:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 9th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Fernand St Germain

Fernand J. St Germain
Chairman

FERNAND J. ST GERMAIN RHODE ISLAND CHAIRMAN

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NINETY-NINTH CONGRESS
WASHINGTON, DC 20515

October 2, 1985

Senator John Brennan
Majority Whip
State of Massashusetts Senate
National Conference of State Legislatures
444 North Capitol Street, N.W.
Suite 203
Washington, D.C. 20001

Dear Senator Brennan:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 9th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Fernand J. St Germain
Chairman

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October 2, 1985

Mr. Albert Williams
First Vice Chairman
Credit Union National Association
1730 R.I. Ave., N.W.
Washington, D.C. 20036

Dear Mr. Williams:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 9th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J St Germain
Chairman

RNAND J ST GERMAIN RHODE ISLAND CHAIRMAN
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STEVE BARTLETT TEXAS
TOBY ROTH WISCONSIN

October 2, 1985

Mr. Thomas J. Ryan
Chairman, Legislative Committee
National Association of Federal
Credit Unions
1111 N. 19th St.
Suite 700
Rosslyn, Va. 22209

Dear Mr. Ryan:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 9th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

THE EXPEDITED FUNDS AVAILABILITY ACT

THURSDAY, OCTOBER 10, 1985

House of Representatives, Subcommittee on Financial Institutions Supervision, Regulation and Insurance, Committee on Banking, Finance and Urban Affairs,

Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St Germain; Representatives Annunzio, Barnard, LaFalce, Schumer, Frank, Wylie, McKinney, Parris, and Bartlett.

Also present: Representative Thomas R. Carper of the full committee.

Chairman St Germain. The subcommittee will come to order.

In H.R. 2443, the Expedited Funds Availability Act, we seek nothing more than to enable consumers to have access to their funds as quickly as feasible. Why this legislation, cosponsored by 120 House Members last year, and by 150 this year, is unacceptable to the bank representatives we heard yesterday, is hard for me to understand. The need for funds availability legislation is clear to the credit union representatives who testified yesterday, and to the consumer groups and agency representatives we will hear from today.

I must express my keen regret that the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, have elected to not appear before the subcommittee on this all-important consumer matter. Their absence after they were given full opportunity to appear—speaks volumes about the low priority that these agencies place on consumer issues. Faced with this kind of attitude among Federal regulators, is it little wonder that so many financial institutions give the consumer the back of their hands on such issues as funds availability.

Now you can rest assured had this been a bill to assist the financial community, the regulators would have come running, filling the room with their multitude of assistants. We would have been deluged with paper and expert witnesses to support the industry's needs. But, when the consumer had his day before this committee, nothing but cold silence from the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board. Sad.

While the issue of funds availability is the issue that has been studied the most thoroughly over an extended period of time, it is not the only consumer concern becoming increasingly urgent as the effects of deregulation are more broadly felt.

Too many market and legislative approaches to financial services have been based on the perceived needs of the institutions with the customer treated as an afterthought. Full exploration of the other consumer issues will go far in establishing a blueprint of the desires and needs of the consumer for improved banking services.

Mr. Wylie.

Mr. **Wylie**. Mr. Chairman, I would just extend my own personal welcome to our very distinguished witnesses this morning, and I look forward to hearing their testimony, sensing that they are going to be helpful to us in solving what is admittedly a difficult problem.

Thank you very much.

Chairman **St Germain**. Thank you, Mr. Wylie.

Our first witness, and we are happy to welcome you back before the subcommittee, is the Honorable Preston Martin, Vice Chairman, Board of Governors of the Federal Reserve System.

You may proceed. We will put your entire statement in the record.

STATEMENT OF HON. PRESTON MARTIN, VICE CHAIRMAN, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

Mr. **Martin**. Our Board commends the committee for this review of an issue which has such importance in the billions of transactions that flow through the payment system. We feel it is an appropriate review, and we greatly appreciate the opportunity to present in brief fashion the position of the Board of Governors on this issue.

Many banks, savings and loan associations, credit unions and other financial intermediaries, such as money market funds, have continued to maintain delayed availability policies, and as the committee has reviewed, several States, beginning with New York, and my own State of California, have passed laws restricting the ability of State-chartered institutions to delay availability to their depositors.

The delayed availability problem arises from the very nature of the check collection system, and the paper transfers that dominate that system.

We are referring to 40 billion or so checks per year, and 75 percent of this enormous flow of paper must be transported from the institution of first deposit to the payor institution.

We have a forward collection process that is highly automated and efficient. The Federal Reserve has had the privilege of participating in the improvements in that forward system, shortening the days, reducing the float by our efforts and the efforts of the industry.

Those checks in the forward collection process are encoded in magnetic machine-readable inks with code numbers, account, amount, so forth, and therefore, they can be processed by today's generation of computer control reader sorters.

It is a swift, high volume operation there. The Federal Reserve System and the correspondent banks maintain special transportation networks, lots of airplanes are moving around the country to speed up the movement, collection, and payment of checks.

In contrast to this process, the payor and the collecting institutions returning checks have a long and largely manual process by which the check return is accomplished.

Instead of machine-readable characters, stamps overlap in some cases, and they are hard to read and you have personnel in the banks and the other institutions, after hours, when they are sorting and processing the checks, struggling with this process.

An institution with a midnight deadline has the tendency to drop the return item in the mail, to protect itself, so we are talking about over 5 calendar days for return as opposed to 1.6 days for forward collection.

Fifteen percent of return items take 10 or more calendar days to complete the round trip, the institution of first deposit to the payor and back again, so we, like the distinguished chairman and the members of this committee, have been seeking ways to ameliorate this problem, what to do about the availability problem, and expediting the return process——

Chairman St Germain. Excuse me. Do you recall when you started studying this at the Fed? Prior to your arrival, I assure you. I think it was 1978; correct?

Mr. Martin. 1977 or 1978, yes, sir; I think we reported to you in 1978 what we had been doing in 1977, yes, sir.

Chairman St Germain. This is 1985, and we discussed it last year, and it was agreed that it started in 1977 or 1978, so at that time it was 6 years, and now it is 7 years counting 1978 to 1985.

Mr. Martin. The chairman's arithmetic is perfect, yes, sir.

Chairman St Germain. The consumers are becoming aware that my arithmetic is accurate in this instance as well.

Mr. Martin. I believe that is right. If we can reduce the duration of the collection cycle, the time a depositor institution is at risk, then we reduce the perceived need to place holds on checks.

As the committee knows, the Board has approved an amendment to regulation J governing Federal Reserve check collection services that requires the payor institution to notify the institution of first deposit directly that it has received a large check, meaning over $2,500 from the Federal Reserve, and is returning it unpaid.

I have testified before with regard to the return item pilot project which is still being run by the Federal Reserve Bank of Dallas. This pilot has had some success in moving checks directly to those hundreds and hundreds of banks all over Texas, the district, to the institution of first deposit, bypassing the intermediary deposit institutions.

Four of our Federal Reserve banks are participating in a pilot program to experiment with check truncation, where the information is extracted from the paper check and converted to electronic form.

We also are working with the banking industry group to develop a test of an automated return process where you take the return item, put it in a carrier envelope, encode the outside of the envelope and get it into the forward collection process.

Chairman St Germain. Is that the one that we heard about for all the Fed banks participating, about 100 institutions?

Mr. **Martin**. This was developed by Valley National Bank, and this is a matter of using a carrier envelope and we think it may have some real promise in speeding the return.

We get the dishonored check back, we can compress this time delay that seems to be bedeviling all of us. Each of these proposals has certain advantages, disadvantages, and we call your attention to a major disadvantage in the return item area in that we are able to reach only the checks that are collected through the Federal Reserve System.

So unless we had the authority which we are seeking to create incentives or require payor institutions to take the necessary steps to expedite the return process, checks that are outside the Federal Reserve clearing process would continue to be returned by this manual, hard-to-read, labor-intensive approach.

Mr. **Barnard**. Would the chairman yield just a second for a question?

Mr. Martin, is that known as the DSS? This is not the DS, direct settlement plan, is it?

Mr. **Martin**. No, sir, we are referring to the use of the carrier envelope.

Mr. **Barnard**. Yes.

Mr. **Martin**. We are attempting to further, and to support each of these innovative efforts, Congressman Barnard. We will come aboard, if you have got a really good idea to speed up this process, we are going to support it.

The second point I would be privileged to make this morning is our advocacy, our rather new advocacy, of the major step for all institutions, all institutions, not just banking, to provide full disclosure to their customers of their availability schedules and policies.

The largest single cause of problems that the depositors experience with 1 check in 1,000, 1 check in 2,000, whatever the ratio is, is the lack of knowledge of the depositor or the customer of what the hold policies are, or whether they exist, and of how they affect an individual check.

In addition, depositors are generally unaware of payment alternatives such as wire transfer. They are costly, but they could provide the payee with immediately available funds.

Third, the Federal Reserve has urged that the delayed availability problem should be resolved through the volunteer efforts of institutions.

In the policy statement that we issued jointly in March 1984, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, we stated that

> Voluntary industry action represents a potential solution to many of the problems caused by delayed availability, without the costs and burdens of a legislative or regulatory approach.

The possibility of voluntary action, and indeed, through our pressure on the trade associations, there has been some voluntary action, some progress in disclosure, and we have noted that.

We have embodied a procedure in our State member banks to develop more concrete evidence of the effects of this voluntarism.

We find preliminarily in examination data—this puts pressure, of course, on the management when examiners are reviewing this—that blanket hold are only imposed by a small minority of depository institutions, and we confirm that consumers are receiving disclosure as to the policies, either at the time they open the account, or at the time that the hold is imposed in most cases.

We have utilized a survey by the University of Michigan's well-known Survey Research Center, and we have disappointing results to report to you from that survey.

The survey did not show any significant decline in the percentage of families reporting problems. In fact, the 1985 survey showed a slight increase in the percentage of families reporting delayed availability problems compared to the 1983 survey which we did. So we are not very positive with regard to the reports so far on the 1984 joint statement and the reviews that we have done on a voluntary basis.

If I could go back to disclosures, very briefly, knowing your time and the witness list, mandatory disclosure requirements, we have come to that point. Mandatory disclosure requirements could ensure that depositors are aware of their institutions' hold policies.

Fifteen years ago, I had something to do with the drafting and requirement of that little sign that you see in financial institutions that talks about equal housing lender. I feel that over that 15-year period, those little signs, and that alertness with the personnel—it is at the teller window, we have to affect the teller here—have had very positive effects. So I believe mandatory disclosure would minimize the incidence of checks drawn on uncollected funds.

We do want to affect, to some extent, the behavior of the depositor. Second, with regard to improvements in the return item process, we seek your authority to extend the notification requirement for large dollar returns—checks over $2,500—to items collected outside the Federal Reserve.

We also seek adoption of direct return provisions that would allow payor institutions to return checks through channels other than the endorsement chain—not going back bank by bank—together with authorizations for payor institutions to obtain immediate payment for checks they return directly and for the Federal Reserve to require payor institutions to complete returns within certain timeframes.

Most of the bills that you are considering establish an ultimate goal of availability within a maximum number of 3 business days. I must report to you that the collection cycle cannot be reduced to 3 business days without a multi-billion-dollar investment in electronic gear, software, main frame computers, linkages through extensive branch systems and all that that entails, which probably——

Chairman **St Germain**. Mr. Martin, please, this is what bothers me. You are giving me all the reasons for why it can't be done instead of telling us how you are going to see to it that it will be done.

There is an attitudinal thing here. Now, New York and California, the great State that you come from—we had testimony from "Mr. Delayed Funds Availability," who was here yesterday from California, with Wells Fargo Bank. Wells Fargo place no holds whatsoever. They have immediate payment, that is, same-day availability. So you and your fellows in the hoods, the monks, the Fed, should spend a little more time examining what is happening in California and New York.

It is working splendidly, so please, when you go back to that exalted institution, work on how we can get it done. Please.

Mr. **Martin**. Do we accept your mandate, mandate and entreaty, sir? If I may footnote my response, it is not easy. We are talking about billions and billions of pieces of paper. We will report to you what we can do in a positive way, as the chairman has suggested, but we can never come back to you and say it is easy—billions of checks, 40,000 institutions scattered around the country, coming in across industry lines, mutual funds, the nonbank banks, and the thrifts—it is a very complicated process.

But we will certainly do our best, sir.

Let me conclude with comments on mandatory availability schedules, if the committee would permit.

We feel there are some significant adverse consequences of these schedules in terms of risks to depository institutions, and in terms of the interdiction of the thousands and thousands of ways that institutions around the country find they must operate, especially small ones.

The smaller the institution, the more remote the location, the more difficult it is to adhere to mandatory schedules. Standardized availability schedules increase the risks to institutions, after the return of checks, after the hold period, and depository institutions' risks may be mitigated by appropriate exceptions to the schedules, as in California or in New York in different ways.

Exceptions could be the large dollar checks, new accounts, and so forth. We are concerned that mandatory availability schedules will become the industry standard, and that those institutions that have better availability will adopt the specified schedule. It is so easy for the teller to look over there at the disclosure chart and say, "This one is 2 days; this one is 3 days; 7 days," whatever it is.

Chairman **St Germain**. Mr. Martin, what we found out from industry witnesses yesterday is that when I said, now, if we have a 3-day, that doesn't preclude you from immediate or 1-day availability, they all agreed. See, doesn't the Fed subscribe to competition? The marketplace?

Mr. **Martin**. Yes, indeed.

Chairman **St Germain**. That is what the witnesses said yesterday. They said naturally, we are competing in that marketplace. If we can make the funds available that much sooner, then we have a competitive edge. So I wouldn't be too concerned about that teller.

That teller is going to be told what the bank policy is, not the mandatory availability schedule in the legislation.

Mr. **Martin**. I think the chairman's comment with regard to competition is well put. Unlike disclosures and improvements to the payments system, such as a return item sharpening, which require uniformity from State to State to be effective, mandatory schedules may be, or may complicate a localized problem that can be dealt with at the State level as we witnessed the differences in the New York and California legislation.

Considerations favoring and opposing such schedules are reflected in the differing views among our Board members. On balance, the majority of our Board is reluctant to favor the imposition of mandatory schedules.

If, however, the Congress—and the chairman reminded us of the 150 cosponsors—chooses to adopt such schedules, the Board implores the committee that the Fed be provided the flexibility to establish the schedules after consideration of all relevant factors, and that it be provided the flexibility to establish necessary exceptions to the schedules.

Any availability schedule adopted should not be tied to improvements to the payments mechanism. Any payment system that relies on paper transfers, paper that must be transported from one place to another, will not be efficient enough to satisfy the desire for maximum collection and return times of only a very few business days.

Such schedules are not possible without a bank enhancing the traditional collection process and converting to electronic forms, a very, very expensive process that requires a very, very long lead time.

Mr. Chairman, to sum up, the Board is prepared to support improving deposit availability through new statutory provisions on disclosure and on expediting the return item process.

We would not, however, on balance, favor a statutory requirement for standard availability schedules.

Thank you, sir.

[The prepared statement of Mr. Martin follows:]

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Statement by

Preston Martin

Vice Chairman, Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions Supervision,

Regulation and Insurance

of the

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

October 10, 1985

I am pleased to appear before this Subcommittee to present the views of the Board of Governors of the Federal Reserve System on the topic of delayed availability. Many banks, savings and loan associations, credit unions, and other financial intermediaries, such as money market funds, have continued to maintain delayed availability policies. That is, they place holds ranging from several days to two or more weeks on funds their customers deposit by check. This practice arises from the institutions' concern for credit risks arising from the return of checks after the proceeds of the checks have been made available to depositors, and it has generated numerous complaints from depositors. Many of their customers are either unaware of the length of the cycle for collection and return, or feel that the risks associated with their deposits do not warrant holds. In the past five years, the practice has generated considerable interest among state and federal legislators, as well as members of the public. Committees of both the House and Senate have held hearings; numerous bills have been introduced in the last two Congresses; and several states, beginning with New York and California, have passed laws restricting the ability of state chartered institutions to delay availability to their depositors.

The delayed availability problem arises from the nature of the check collection system -- a system that requires that a paper check be moved from the payee to the institution on which it is drawn for payment to be made. Approximately 75 per cent of the 40 billion or so checks that are written each year must be transported from the institution of first deposit to the payor institution. Every institution in the collection stream has an interest in moving the check forward as rapidly as possible in order to obtain payment from the payor. This basic incentive has resulted in a forward collection process that is highly automated and efficient. Checks are encoded in magnetic, machine-readable inks with code numbers identifying the payor, the drawer's account, and the amount. These techniques enable the checks to be processed by computer-controlled reader-sorters which sort the checks and send them on their way with great speed and efficiency. The Federal Reserve System and large correspondent banks maintain special transportation networks to link institutions of first deposit and payor institutions. Continual competition among depository institutions that offer collection services assures that this process will continue to be self-improving.

The incentive to move checks as quickly as possible is not, however, present in the return process. In contrast to the forward collection process, where availability to the institution of first deposit depends on when the check will reach the payor institution, the payor and the collecting institutions returning checks will be reimbursed promptly upon return of a check to their prior indorser. Thus, they have no incentive for speeding the return to the institution of first deposit and consequently for making the overall return process more efficient.

This difference in incentives has resulted in a return process that differs markedly from the collection process. In fact, the process of returning an unpaid check from the drawee to the institution of first deposit can fairly be described as the reverse of the efficient forward collection process. Instead of machine-readable characters, there are indorsement stamps that are not only not machine readable, but are often difficult to read manually or even illegible. Instead of computer processing, there is manual sorting. Instead of dedicated transportation facilities, there is widespread use of U.S. mail and other common carriers. As a result, the average return takes approximately three times as long as the average forward transit -- 5.2 calendar days for return as opposed to 1.6 days for forward collection. Further, a significant minority of checks, 15 per cent, take 10 or more calendar days to complete the round trip from the institution of first deposit to the payor and back again.

Since the institution of first deposit does not know the final disposition of a check after it sends it to the next institution in the collection chain unless it is returned unpaid, the institution of first deposit incurs some risk if it allows its customer to withdraw the check's proceeds before allowing sufficient time for the check to be returned. This is true even though less than one per cent of all checks collected are ever returned unpaid.

This analysis has led many, including the Federal Reserve, to place primary emphasis on seeking a solution to the delayed availability problem on expediting the return item process. By reducing the duration of the collection cycle, the time that a depository institution is at risk is also reduced as is the perceived need to place holds on checks. We at the Federal Reserve, who have been charged by Congress with maintaining an efficient payments mechanism, have taken a number of concrete steps to improve the return process and to enable depository institutions to provide more prompt availability. Recently, the Board approved an amendment to regulations governing Federal Reserve check collection services that requires the payor institution to notify the institution of first deposit directly that it has returned a large-dollar check it has received from the Federal Reserve unpaid. This amendment, which took effect last week, will provide the institution of first deposit with information about a check that is being returned much sooner than could be the case if it had to wait for the check to be returned. This change should make a significant improvement to the payments mechanism.

We have testified before about the return item pilot which is being run by the Federal Reserve Bank of Dallas. This pilot has had some success in moving checks directly from the payor institution to institution of first deposit, by-passing the intermediary depository institutions.

The Federal Reserve is also working with private sector groups to seek better solutions to the return item problem. Four Reserve Banks are participating in a pilot program to experiment with check truncation (where the necessary information from a check is extracted and converted to electronic form). The Federal Reserve is also working with a banking industry group to develop a test of an automated return process in which the return item will be placed in a carrier envelope encoded with the routing number of the institution of first deposit and the dollar amount. The envelope with the unpaid check would then be placed in the forward collection stream, taking advantage of all of its efficiencies.

Each of these proposals has certain advantages and disadvantages. One disadvantage of efforts undertaken by the Federal Reserve is that they reach only checks that are collected through the Federal Reserve System. The remaining checks that are not collected through the Federal Reserve will not necessarily benefit from these improvements. Unless the Federal Reserve has the authority to create incentives or require payor institutions to take the steps necessary to expedite the return process, these checks will continue to be returned by the old manual processing methods.

In addition to implementing these techniques, other improvements in the delayed availability situation can be made. One major step would be for all institutions to provide full disclosure to their customers of their availability policies. Several studies suggest that the largest single cause of the problems that depositors experience in this area is ignorance of hold policies -- of their existence and of how they affect individual checks. In addition, depositors are generally unaware of payment alternatives, such as wire transfers, that, although more costly than checks, can provide payees with immediately available funds when used by payors.

Another step that can alleviate the availability problem is for institutions to conduct a more careful evaluation of their hold policies and their customers' credit positions. Such evaluations would avoid the imposition of holds on checks where there is little risk of nonpayment or on accounts where experience shows that little risk is involved. For example, government checks and cashiers' checks deposited by the payee into an established account pose little risk of nonpayment. Long-standing customers who have not abused their accounts are likely to be good for the funds even if a check is returned, and customers with overdraft protection or other credit lines have already been evaluated by their institutions and found creditworthy. Hold policies should be revised to avoid delays in availability where the risk to the institution of first deposit is small.

The Federal Reserve has urged that the delayed availability problem should be resolved through the voluntary efforts of depository institutions. In the policy statement that we issued jointly in March, 1984, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, we stated that "voluntary industry action represents a potential solution to many of the problems caused by delayed availability, without the costs and burdens of a legislative or regulatory approach." The agencies strongly encouraged institutions to review their hold policies, reducing delay periods to the extent possible; disclose their policies to depositors in an effective manner; and refrain from imposing unnecessary delays on all checks.

While some progress has been made, especially in increasing consumer awareness, much remains to be done, not only in the area of consumer awareness, but also in actually providing better availability to depositors.

We have surveyed many of the industry groups with which I had previously met to discuss voluntary efforts to resolve the delayed availability problem. Several of these groups have followed through by encouraging their members to make disclosure and to review their delay policies. They report that feedback from their members indicates improvements in disclosure of availability policies. The Federal Reserve, through its examination of state member banks, is attempting to develop more concrete evidence of the effects of the March 1984 policy statement. The preliminary results of this effort suggest that blanket holds are only imposed by a small minority of depository institutions and confirm that consumers are receiving disclosures as to delayed availability policies either at the time they open the account or the time that the hold is imposed.

Despite the voluntary efforts, surveys of consumer experience with delayed availability problems taken on behalf of the Federal Reserve by the University of Michigan's Survey Research Center have not shown any significant decline in the percentage of families reporting problems. In fact, the 1985 survey showed a slight increase in the percentage of families reporting delayed availability problems over the 1983 survey. Voluntary efforts do not appear to be providing a rapid solution to this problem.

A number of legislative proposals have been made incorporating disclosures, payments system improvements, and availability schedules. Some of these proposals are based on past experience with state legislation. A preliminary review of the experience of states with such legislation indicates that some of the approaches states have taken to the delayed availability problem may be successful if adopted on the national level.

There are three principle approaches to the problem of improving deposit availability that can be derived from the state and proposed federal legislation. These approaches involve disclosure requirements, improvements in the payments system, and mandatory availability schedules. I will address each of these in turn.

1. Disclosures

Mandatory disclosure requirements could ensure that depositors are aware of their institutions' hold policies, minimizing the incidence of checks drawn on uncollected funds with all of the problems that result from such overdrafts. Such disclosure should not, and need not, be complex or burdensome, and could also provide for ready comparison of competing institutions' policies. Thus, disclosures can create competitive pressures to reduce hold periods.

2. Improvements to the Return Item Process

The Board would be assisted in meeting its commitment to work with depository institutions to increase the efficiency of the return item process by Congress providing (a) authority for the Federal Reserve to extend the notification requirement for large-dollar returns to items collected outside the Federal Reserve; (b) adoption of "direct return" provisions that would allow payor institutions to return checks through channels other than the indorsement chain, together with authorization for payor institutions to obtain immediate payment for the checks they return direct; and (c) authority for the Federal Reserve to require payor institutions to complete returns within certain time-frames. With these goals we can expedite the return process and reduce its overall costs, thus reducing risk and providing the foundation for more rapid availability to customers.

I would like to stress, however, that the improvements to the return item process that are feasible in the forseeable future will not be sufficient to improve clearing times to the point of providing for return of the majority of checks within the goals established by some of the legislation that has been introduced. Most of the bills that Congress is considering establish an ultimate goal of availability within a maximum of three business days. The collection cycle cannot be reduced to three business days without a wholesale transition from traditional check collection procedures to electronic collection.

Nevertheless, improvements in the return process are still desirable because they can increase the efficiency and reduce the costs of the return process, and because quicker collection and return will reduce the risks to institutions that give some or all of their customers availability prior to the completion of the collection cycle.

3. Mandatory availability schedules

The Board has given careful attention to the provisions on mandatory availability schedules that are included in most of the bills that Congress is now considering. This analysis has identified some significant adverse consequences of these schedules in terms of risk to depository institutions and regulatory burden that must be balanced against the benefits that they are likely to provide to the institutions' customers. Standardized availability schedules increase the risk to the institution from the return of checks after the mandated hold period has expired. On the other hand, schedules tailored to accommodate fully the return process, while minimizing the risk to the institution of first deposit, also minimize the benefit, in terms of prompt availability, to the institutions' customers.

While depository institutions' risks may be mitigated by appropriate exceptions to the schedules for certain classes of checks or accounts (such as large-dollar checks or new accounts) the institutions can only avail themselves of these exceptions through procedures which could well increase the regulatory burden of administering deposit accounts.

We are also concerned that mandatory availability schedules will become the industry standard, and that those institutions that have better availability will adopt the specified schedule. In most instances, institutions have given prompt availability or have decided not to impose holds on depositors that have established good records. If depository institutions respond to mandatory schedules by limiting availability in this fashion, the net benefit to the aggregate of depositors will be minimal.

Unlike disclosures and improvements to the payments system, which require uniformity from state to state in order to be effective, the most egregious delays in availability which mandatory schedules are designed to correct may be a localized problem that can be dealt with at the state level. Several states have already taken the initiative to adopt such schedules. In view of potential local variations in this problem, state action may well be the most appropriate vehicle for addressing mandatory availability schedules.

The considerations favoring and opposing such schedules are reflected in differing views among the Board members. However, on balance, a majority of the Board is opposed or reluctant to favor the imposition of such schedules.

If, however, the Congress chooses to adopt such schedules, the Board strongly urges that it be provided the flexibility to establish the schedules after consideration of all relevant factors, and that it be provided the flexibility to establish necessary exceptions to the schedules.

I would like to add one final, general point. Any availability schedule adopted should not be tied to improvements to the payments mechanism. As I have already pointed out, any payment system that relies on paper instruments that must be transported from one place to another will not be efficient enough to satisfy the desire for maximum collection and return times of only a few business days. Such schedules are not possible without abandoning the traditional collection process and converting to electronic forms -- an expensive process that requires a long lead time.

Mr. Chairman, to sum up, the Board is prepared to support improving deposit availability through new statutory provisions on disclosure and on expediting the return item process. We would not, on balance, favor a statutory requirement for standard availability schedules.

I would be pleased to answer any questions that the Subcommittee may have.

Chairman **St Germain**. Thank you.

I would say to the Board, through their eminent Vice Chairman, that the committee and the consumers of this Nation have been waiting since 1977-78 for the Board to do something to assist in this area.

To date, the University of Michigan survey—they are being well-paid, I am sure—is the only survey that tells you what we could have told you from our mail, from our constituents, from any television anchorman, news reporter or newspaper writer. An editor from a Chicago paper gave that example yesterday, he wrote us. The Fed could have saved a lot of money, but I realize you have to support these universities. We are happy that you are supporting the University of Michigan.

With all due respect, we are aware of it. We have waited 8 years. We are not going to wait any longer. We are not going to give the Fed the authority to do this when they decide they might want to get around to it.

We are going to set the parameters now, and give you all the initiative you need to improve on what we set. That way, we know that it is going to be done. We are going to take into consideration your requests for some amendments in this legislation that will be of benefit to all of us, to the consumers, and the institutions. We can indeed effectuate that which we are looking to get accomplished.

Some of the amendments you suggested, like leaving it to the Fed to suggest the dates—no, no, we are going to do it.

Chairman **St Germain**. Now we are going to hear from the Honorable P.A. Mack, Vice Chairman of the National Credit Union Administration Board. He is accompanied by Robert Fenner, General Counsel.

You may proceed.

STATEMENT OF HON. P.A. MACK, VICE CHAIRMAN, NATIONAL CREDIT UNION ADMINISTRATION; ACCOMPANIED BY ROBERT FENNER, GENERAL COUNSEL

Mr. **Mack**. Mr. Chairman, members of the subcommittee, the National Credit Union Administration supports the concept of measures such as your bill, H.R. 2443, aimed at providing both standardization in our Nation's payments system and the much-needed protection for consumers from abuse in the financial marketplace.

Looking at the system as a whole, it is clear that legislation establishing a national policy on funds availability is overdue. Study after study has shown that many financial institutions have taken advantage of their customers by refusing to credit a depositor's account until long after the institution has received credit for the funds itself.

Reports indicate that many checks are not credited for up to 2 weeks after deposit. In these instances, a person deposits a check in his bank; after a reasonable wait, he writes a check which then bounces because the original deposit has not yet been credited.

Adding injury to the embarrassment of the situation, both the financial institution and the merchant or business to whom the check was written add a substantial monetary penalty.

There is no justification for financial institutions to behave in this manner. In reality, less than 1 percent of all checks written in this country are returned uncollected and the vast majority are cleared in a few days or less.

We are proud of the record of credit unions on delayed funds availability, and we believe their experience shows that excessive check hold policies are unnecessary.

In 1984, the National Credit Union Administration surveyed our six regional offices and credit unions themselves on the issue of funds availability. We found that during 1983, our regional offices had received no complaints from credit union members on check hold policies.

There were a few complaints on other delayed funds issues mainly relating to members' shares frozen under the credit union bylaws due to either loan delinquencies or liquidity problems.

We also found that most credit unions immediately credit a member's account for any type of deposit and provide immediate availability up to a reasonable dollar limit on all checks.

Late last week, Mr. Chairman, in preparation for this hearing, we asked each of our regional offices to quickly give us an update on the earlier reports. I am pleased to say that thus far, during the first 9½ months of 1985, we have received only 5 consumer complaints regarding delayed funds at the over 10,000 credit unions under our direct jurisdiction.

Further, it is the unanimous observation of our regions that credit union practices on this issue continue to reflect their cooperative member-oriented character. Most credit unions still provide immediate credit and immediate access to deposited funds.

Reasonable dollar limits, not unlike those recognized by H.R. 2443, are sometimes imposed by credit unions. However, these limits, in most cases, don't apply to Government checks such as Social Security.

Where the democratically-elected credit union board has decided upon a policy for a delay in funds availability, it is sometimes waived on an individual or emergency basis. Additionally, it is our observation that, where delays are imposed, they are almost always within the limits contained in pending legislation.

Lastly, credit unions usually keep members informed about their policies through newsletters, brochures or bulletin boards.

For a more detailed current survey on this subject, I would cite the recently released data from the Credit Union National Association. In March and April of this year, CUNA surveyed 1,600 credit unions and compared its findings with those of the Consumer Federation of America and other institutions.

Only about 12 percent of credit unions, but over 80 percent of banks, were found to have a policy holds on local checks. Further, the charge for a "bounced" check at banks averaged more than $13 compared to $9.24 at credit unions.

We conclude, Mr. Chairman, that on delayed funds, the vast majority of credit unions are already meeting or exceeding the standards contained in your bill. They would have little difficulty, therefore, in complying with the provisions of H.R. 2443—I am glad that brings a smile to your face, Mr. Chairman—or similar bills pending before this subcommittee.

This legislation, moreover, would be most useful in preventing those isolated instances of abuse which now exist, or might develop, among credit unions.

It also would be valuable in modernizing and standardizing our very complex and interrelated payments system. Credit unions are an important element in this system and we are pleased that your bill recognizes their unique problems by making allowances for those institutions, like credit unions, which are in a "payable through" situation.

We would suggest an additional area where some modification might be made to accommodate credit union uniqueness. As you know, the vast majority of credit unions are small. Nearly 80 percent are under $5 million in assets, two-thirds are under $1 million.

One-third of all credit unions still are staffed completely by volunteers. Many of these credit unions post interest only once a month. Section 7 of H.R. 2443 requiring interest to accrue from the day of deposit could prove a hardship for these credit unions.

We would be pleased to work with the subcommittee to see if a reasonable alternative can be found to alleviate this concern. Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear. I would be pleased to answer questions.

[The prepared statement of Mr. Mack follows:]

TESTIMONY OF

P. A. MACK, JR.

VICE CHAIRMAN

OF THE

NATIONAL CREDIT UNION ADMINISTRATION

BOARD

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

SUPERVISION, REGULATION AND INSURANCE

COMMITTEE ON BANKING, FINANCE

AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 10, 1985

Mr. Chairman and Members of the Subcommittee, I am P. A. Mack, Jr., Vice Chairman of the National Credit Union Administration Board. Accompanying me today is Robert Fenner, our General Counsel. Thank you for inviting me to present the views of NCUA on delayed funds availability legislation.

NCUA supports the concept of measures such as your bill, H.R. 2443, aimed at providing both standardization in our nation's payments system and much needed protection for consumers from abuse in the financial marketplace.

Looking at the system as a whole, it is clear that legislation establishing a national policy on funds availability is overdue. Study after study has shown that many financial institutions have taken advantage of their customers by refusing to credit a depositor's account until long after they have received credit for the funds themselves. Reports indicate that many checks are not credited for up to two weeks after deposit. Often, a person deposits a check in his bank; after a reasonable wait, he writes a check which then bounces because the original deposit has not yet been credited. Adding injury to the embarrassment of the situation, both the financial institution and the merchant or business to whom the check was written add a substantial monetary penalty.

There is no justification for financial institutions to behave in this manner. In reality, less than one percent of all checks written in this country are returned uncollected and the vast majority are cleared in a few days or less.

We are proud of the record of credit unions on delayed funds availability, and we believe their experience shows that excessive check-hold policies are unnecessary. In 1984, the National Credit Union Administration surveyed our six Regional Offices and credit unions themselves on the issue of funds availability. We found that during 1983, our Regional Offices had received no complaints from credit union members on check-hold policies. There were a few complaints on other delayed funds issues mainly relating to members' shares frozen under the credit union bylaws due to either loan delinquencies or liquidity problems. We also found that most credit unions immediately credit a member's account for any type of deposit and provide immediate availability up to a reasonable dollar limit on all checks.

Late last week, Mr. Chairman, in preparation for this hearing, we asked each of our Regional Offices to quickly give us an update on the earlier reports. I am pleased to say that thus far during the first nine and a half months of 1985, we have received only five consumer complaints regarding delayed funds at the over 10,000 credit unions under our direct jurisdiction. Further, it is the unanimous observation of our Regions that credit union practices on this issue continue to reflect their cooperative member-oriented character. Most credit unions still provide immediate credit and immediate access to deposited funds. Reasonable dollar limits, not unlike those recognized by H.R. 2443, are sometimes imposed by credit unions. However, these limits, in most cases, don't apply to government checks such as Social Security. Where the democratically-elected credit union board has decided upon a policy for a delay in funds availability, it is sometimes waived on an individual or emergency basis. Additionally, it is our observation that, where delays are imposed, they are almost always within the limits contained in pending legislation. Lastly, credit unions usually keep members informed about their policies through newsletters, brochures, or bulletin boards.

For a more detailed current survey on this subject, I would cite the recently released data from the Credit Union National Association. In March and April of this year, CUNA surveyed 1,600 credit unions and compared its findings with those of the Consumer Federation of America about other institutions. Only about 12% of credit unions, but over 80% of banks, were found to have a policy of placing holds on local checks. Further, the charge for a "bounced" check at banks averaged more than $13.00 compared to $9.24 at credit unions.

We conclude, Mr. Chairman, that on delayed funds, the vast majority of credit unions are already meeting or exceeding the standards contained in your bill. They would have little difficulty, therefore, in complying with the provisions of H.R. 2443 or similar bills pending before this Subcommittee. This legislation, moreover, would be most useful in preventing those isolated instances of abuse which now exist, or might develop, among credit unions. It also would be valuable in modernizing and standardizing our very complex and interrelated payments system. Credit unions are an important element in this system and we are pleased that your bill recognizes their unique problems by making allowances for those institutions, like credit unions, which are in a "payable through" situation.

We would suggest an additional area where some modification might be made to accommodate credit union uniqueness. The vast majority of credit unions are small. Nearly 80% are under $5 million in assets, two thirds are under $1 million. One third of all credit unions still are staffed completely by volunteers. Many of these credit unions post interest only once a month. Section seven of H.R. 2443 requiring interest to accrue from the day of deposit could prove a hardship for these credit unions. We'd be pleased to work with the Subcommittee to see if a reasonable alternative can be found to alleviate this concern. Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear. I'd be pleased to answer questions.

Chairman ST GERMAIN. Mr. Mack, tell me something.

Mr. MACK. Yes, sir?

Chairman ST GERMAIN. Would the National Credit Union Administration be amenable to entertaining the erudite individuals at the Federal Reserve Board? Would the NCUA telling them how the credit unions are able to comply with the requirements of the legislation? Maybe the banks need more volunteers, rather than paid tellers who are going to look up at the Board and blah, blah, blah.

Would the NCUA be willing to give some instructions to the Fed?

Mr. MACK. We would be delighted to.

Chairman ST GERMAIN. Governor Martin, I have solved the problem.

Mr. MARTIN. We accept Chairman Mack's invitation.

Mr. MACK. Thank you for bringing us together.

Chairman ST GERMAIN. Golly gee.

Mr. BARNARD. Mr. Mack, don't 99 percent of those checks that you process, aren't they cleared by banks?

Mr. MACK. Yes, sir, they are.

Chairman ST GERMAIN. If those checks can be cleared by banks and NCUA still complies with the legislation, why can't the banks do it?

Mr. BARNARD. I am sure that the chairman understands what I am talking about. All they do is package up their checks and take them to the banks, then the bank has the problem of availability.

They no longer have that problem. They just then transfer that to the banks. I don't know how their getting together is going to solve that problem.

Chairman ST GERMAIN. I don't care how it is solved, as long as it is solved.

Mr. Annunzio.

Mr. ANNUNZIO. Mr. Martin, I am delighted that you are back before the committee. I have one question, consumer studies done by the Federal Reserve in 1977, 1981, and 1983, all show that significant number of consumers have experienced problems with delayed funds. Nevertheless, the Federal Reserve continues to oppose imposing availability schedules. How much evidence is going to be necessary before the Board recognizes there is a problem that is not being solved, and that there is no incentive short of imposing schedules that will solve it?

Mr. MARTIN. Congressman, we recognize that the problem exists, that many, many consumers are inconvenienced, even infuriated when they encounter this phenomenon, and we know it is not good.

We are working in the various ways in which I have indicated to correct and make more efficient the process, but it is a process involving billions of pieces of paper and millions of transactions, even in a single institution with its many branches.

It is a very complicated problem which does not lend itself to easy, short-run solutions. We are working at it.

Mr. ANNUNZIO. That is what you said in your testimony. You recognize the problem. You are working at it. All that I want to know is how long before you finally do something about it? This is all. How long? Another 6 months? Another year?

We are trying to solve this problem. We let these problems linger in our country for a long time. We always want to help this country and that country. Meantime, if an American travels, they shoot them in the head and nothing is done about it.

We are solving the problems of everybody. We have a problem right here, these are our own people. I appreciate the fact that you have been working on this problem a long time.

Mr. MARTIN. I only wish, Congressman Annunzio, that I had the answer, that I could say to you, our findings so far say in *x* years, we have got it, because it is such a complicated problem, that I don't know the answer, nor do our people know the answer to that.

Mr. ANNUNZIO. I thank you very much. You speak the tongue of my mother, so I will say "vazupada."

Mr. Mack, I want to commend the National Credit Union Administration Board for supporting H.R. 2443. Your support shows that the Board recognizes the hardships that unreasonable check holds can cause.

Banks claim that this legislation will expose them to potentially great fraud losses. Do you think H.R. 2443 will increase credit union losses from bad check artists?

Mr. MACK. I don't believe they would, Congressman. We wouldn't have solid evidence on that right now, but my opinion is that I would not anticipate that.

Mr. ANNUNZIO. Thank you very much.

Chairman ST GERMAIN. Well, Mr. Mack, haven't you had that experience in New York for a couple of years?

Mr. FENNER. We do know in the range of 80 to 85 percent of all credit unions already provide immediate funds availability and they have not experienced out of line bad check losses as a result.

Chairman ST GERMAIN. Mr. Martin, maybe we should all send newsletters out to our constituents, to tell them about the big banks with all their branches, and that what they should do is go to unitary banks, which have one or two branches. That way, they could get their money much quicker.

Maybe some banks are too big, and that is why the whole thing is so complex. Doesn't bigness bring about big problems?

Mr. MARTIN. Extended branch system, offices across State lines, it makes the problem——

Chairman ST GERMAIN. People ought to forget about the big banks, let them give up check cashing and transaction accounts for a period of time.

Mr. MARTIN. The extensiveness of the competition today is a positive factor to the consumer. The big bank may come in with a whole new set of services which the little bank has to match, and that is good for everybody.

Chairman ST GERMAIN. Stick with delayed funds availability. If the consumer goes to the little bank, he won't have the problem that that big bank complains about, all the branches, millions of transaction accounts to process, etc. Go to the little bank.

Mr. MARTIN. The little bank still sends its checks to some clearinghouse, some operation center somewhere hundreds of miles away, so that it gets packaged and processed with the other banks.

You still have to use an operation center, little or big. It is still a problem, even for a small bank.

Chairman **St Germain**. Well, how come so many banks are ready and able to comply with this? Are they doing something illegal, or improper?

Mr. **Martin**. Because the branch manager at a small bank in the small community—a stable community without any inflow, inmigration—knows his customers, who know the new depositor. He calls them up and says, "Is this guy good for this money?" "Yes." And then he pays him.

No way to check on the new depositors in the other banks, they have a different problem. The credit union, all working for the XYZ corporation, they can——

Chairman **St Germain**. The more you talk, the more answers you give, the more I am convinced that we better expeditiously expedite funds availability, legislation. If we wait for the Fed, we will be in the year 2000, and we will still be told about the problems that exist.

Mr. Wylie.

Mr. **Wylie**. Thank you, Mr. Chairman.

I do think there is a problem about funds availability, but I don't think the problem is as easily solved as the chairman says.

Credit unions are unique, you said it, I agree with you, but with all due respect, I do think they are a little bit different than some of the large commercial banks.

Most of the members of the credit union are of a common bond, they are small. They know who the payor of the check is. Is that right or not?

Mr. **Mack**. Yes, sir, you are right, Congressman. I don't sense that there is an analogy between a credit union and a commercial bank in this regard.

Chairman **St Germain**. I can't let Frank outdo me. Vive le difference.

Mr. **Wylie**. All right, you made your point.

I don't understand what Mr. Martin said. We will probably never know what they said.

Mr. **Martin**. Maybe he said credit unions are unique and different.

Mr. **Wylie**. Mr. Martin, I have a copy of a letter from Margaret Egginton Deputy to the Chairman of the FDIC, addressed to the Banking Chairman, Fernand J. St Germain. The third paragraph says, "Sections 4 and 5 of the bill would impose a precise funds availability schedule on bank deposits." We do not favor these provisions because we believe the cost of imposing a quick availability requirement on all depositors will ultimately be borne by all depositors regardless of their need or desire for it. Also, given the diversity in this country with respect to geographical location, transportation facilities, use of technology, and banking structure, we believe that imposing a single, uniform availability schedule could prove inequitable.

Mr. **Martin**. I agree fully with that statement, Congressman.

Mr. **Wylie**. Would you have any way of making an estimate as to how much additional cost there would be?

Mr. **Martin**. Let me inquire. I don't know if we have any data.

Mr. **Wylie**. You can supply that for the record, if you think there is something.

Mr. **Martin**. We do have some New York data that had been reviewed by our staff with regard to the setting of availability standards in that State. That data indicates that less than 20 percent of the banks' incurred losses, 18 or 19 percent incurred losses, and the average loss was under $2,000, something like $1,800.

Mr. **Wylie**. Thank you, I think it is a pertinent question.

I think we are in a kind of catch-22 situation here in some respects. We are going to be told here a little later on by some of the consumer groups that hold periods, as long as they are, are still insufficient to protect banks from all bad checks.

Due to the lengthy return process which can exceed even the hold period, therefore, given the hold period, it may not provide effective protection, how can this rationale be used to defend the banks' policy?

Mr. **Martin**. Reasonable hold periods that could be embodied in a regulation comparable to the California, New York standards of 8 intervening days, 7, something of that sort, will not catch the 15 percent of the return items that are 10 days or more.

Banks are in a risktaking business, as we all know, and they are going to have some losses.

That is the nature of banking.

Mr. **Wylie**. Now, I am going to demonstrate my dilemma further. Recently, I went to a retail store in Columbus and paid for my goods with a check, and the person who received the check participates in the TeleCheck Program.

They picked up the phone, called someone someplace somewhere, I don't know where it was, and immediately said my check was all right. Why can't the banks use some kind of a system like that?

Mr. **Martin**. I think there has been some progress in that way. It is a promising area. It takes a lot of capital investment, though, because the computer is being called, and some data is being read into that, as it would be for an American Express card.

That is an expensive process, nothing wrong with it.

Mr. **Wylie**. It can't be too expensive, because retail owners operate on a fairly close margin of profit, and if there is a lot of volume in the system, it could be made available. Well, it is something to explore.

Thank you, Mr. Chairman.

Chairman **St Germain**. Maybe the Fed could check with Safeway and see how they are able to afford it.

Mr. Barnard.

Mr. **Barnard**. Mr. Margin, welcome, gentlemen, to the panel this morning. Your testimony has been very helpful in trying to solve this very, very delicate problem we have.

I really think that we have an opportunity here to have a double-barrel approach to the problem. The legislation before us certainly provides an incentive, a motivation to get something done.

On the other hand, and I think that the Fed has been working, and of course, we have had some hearings on this in my subcommittee, to speed up the collection process.

Maybe you have not made the progress that the Members of Congress think you should have made, but I do know you are working on it.

I do think this legislation is going to be helpful in speeding up the process, and certainly bringing, given the importance of the issue, you know, to the general public, and so I would certainly encourage the Fed to spend as much time, and give as much attention as possible in trying to help us with this dilemma and make suggestions as to how we can determine what kind of schedule be practical or possible because I think some schedule will be mandated in this bill of some kind.

That is pretty well determined. The next thing is to determine what is a reasonable schedule. I don't particularly have any questions or dispute with anything you have said.

I was very much interested in the discussion that you and the chairman had on competition in the marketplace, because I know there is still a concern among some of the correspondent banks in the country, that the Fed has an unfair advantage in competing with them in the correspondent banking field.

How would that help solve this problem. It may have some relationship to that problem, and I will look into it, but I would say, there is some concern about that. One of the attempts to solve that problem was made by me earlier in the year, when I introduced H.R. 636, and I am sure you are familiar with that.

Back in June 1983, we had hearings at which time Mr. Corrigan, who is now the president of the Federal Reserve Bank of New York, and who was at that time in what, Minnesota?

Mr. **MARTIN**. Minneapolis.

Mr. **BARNARD**. He testified before our committee, it was his project to help facilitate some of the clearing problems, but he testified that he would have no objection to a bill that permitted interstate pickup of checks from depositories that would allow the correspondent bank to treat those checks as deposited at the time the checks were picked up.

Is it still the Fed's position that this check would not be objectionable and would you object to an amendment to that effect, primarily expediting funds availability?

Mr. **MARTIN**. We maintain the same posture and would support such an amendment or section, yes, sir.

Mr. **BARNARD**. I would invite the members of the committee to look at this bill and get some support of it, and we could have it as one of the possible amendments to the bill, because it has a relationship to the problem that we have before us.

Chairman **ST GERMAIN**. If the gentleman would yield, would the Fed be gracious enough to provide us with a one-page evaluation of Mr. Barnard's very important legislation? We would then provide it to the other members of the subcommittees.

[The following information was subsequently received from Mr. Martin:]

OCTOBER 29, 1985.

Hon. FERNAND J. ST GERMAIN,
Chairman, Subcommittee on Financial Institutions Supervision, Regulation and Insurance Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN ST GERMAIN: At the hearing on delayed availability that the Subcommittee held on October 10, you and Representative Barnard requested the Board's comments on H.R. 636, which Mr. Barnard introduced earlier this year. H.R. 636 would add to the Federal Reserve Act's pricing provision (12 U.S.C. § 248a) a new paragraph authorizing all depository institutions to receive for deposit evidences of transaction accounts from other depository institutions or from the Federal Reserve without regard to any federal or state laws restricting the number or location of the receiving institution's offices. The bill's preamble states that its purpose is to promote the efficiency of the nation's payments mechanism by enhancing "the abilities of depository institutions to compete with the Federal Reserve System in the business of exchanging and clearing checks, drafts, and other evidences of transaction account funds. . . ."

This bill appears to have its origins in a comment made by the National Payments System Coalition during joint oversight hearings held in mid-1983 by the House Banking Committee's Subcommittees on Commerce, Consumer and Monetary Affairs and Domestic Monetary Policy. During those hearings the Coalition stated that the Federal Reserve enjoyed an unfair structural advantage in that Reserve Banks are able to pick up deposits any place without restrictions. The Coalition recommended that commercial banks be given the same authority as the Federal Reserve to pick up interbank checks without regard to any federal or state branching restrictions.

H.R. 636 is apparently designed to meet the Coalition's request. It does not, however, appear to authorize full nationwide deposit-taking. Only checks, drafts, and other instruments that evidence transaction accounts may be received. The bill would not authorize receipt of cash deposits and would only authorize deposits made by other depository institutions, thus preventing the bill from being read to authorize nationwide deposit-taking. It is not clear to us whether the bill would authorize the receipt of drafts payable through depository institutions which are often treated as checks by collecting banks.

We have no objection to the passage of H.R. 636 as it will clarify the status of the correspondent banks as they compete with the Federal Reserve. Because the question arose in connection with the Board's testimony on delayed availability legislation, we must note that the bill will not necessarily increase the speed or efficiency of the check collection system. To the extent that the bill would result in benefits to the clearing system, such benefits would probably accrue to the forward collection process, which is already highly efficient, and not necessarily to the process of return, which is the primary cause of the delayed availability problem.

Sincerely,

PRESTON MARTIN.

Mr. **BARNARD**. One further question, this matter of DSS, direct settlement service. This is an idea that was developed by the Bank of America, as you know, in hoping to speed up the process.

What is your evaluation of that plan?

Am I catching you off guard on that?

Mr. **MARTIN**. Let me refer to one of our staff members who is present, Congressman Barnard, if I may. This is Elliott McEntee.

Chairman **ST GERMAIN**. Please identify yourself.

Mr. **MCENTEE**. Elliott McEntee with the Federal Reserve Board, Associate Director of the Division of Federal Reserve Bank Operations. We have been working with the California bankers for a couple of years on this project.

We have done a cost-benefit analysis of the proposal, which would allow depository institutions to collect checks directly outside the Federal Reserve System, acting as an agent for the Federal Reserve.

Our preliminary studies indicate that there would be improvements in the collection of checks in certain cases, but it could be very expensive. We have asked the California bankers to provide us with additional data so we can complete the study.

Mr. **BARNARD**. It has been expensive to whom?

Mr. **MCENTEE**. To depository institutions participating in this program. The Federal Reserve has a pretty extensive transportation network in place for collecting checks, and in a lot of cases, the private sector would duplicate this under a DSS process.

We have asked the California banks to provide us with additional information, so we can complete our study on the cost of this program. At the same time, we ask the California bankers if they would like us to put this concept out for public comment, because it would require all depository institutions in the United States to participate, and the California bankers have indicated to us that they would rather provide us with additional data so we can refine our study before we publish this for public comment.

Mr. BARNARD. Would DSS speed up the collection of checks?

Mr. MCENTEE. In certain cases, we think it would be, but only for a relatively small percentage of checks—collected faster and checks that would be of fairly large dollar value—because it would be more expensive for the banks to collect these checks through the DSS process.

It could cost banks considerably more to collect checks under DSS and banks would probably deposit only large dollar checks in that program.

Mr. BARNARD. Mr. Chairman, my time has expired, but I would like to ask Mr. Martin if his group would give us the benefit of what you have done on the DSS and how it relates to check collection.

Second, and I think this is related, there have been some studies which indicate that through some computer programs, we have been able to reduce the return check time to 2 days, 2 or 3 days. That is done by bypassing some of the endorsers.

Don't you have some studies on that?

Mr. MCENTEE. Yes, I think you may be referring to the pilot program in the Dallas Federal Reserve Bank.

Mr. BARNARD. Yes.

Mr. MCENTEE. The results of the pilot program indicate that about 30 percent of the checks can be returned 1 day faster under that program, about 5 to 6 percent actually take a longer period of time and the remaining returned in the same timeframe as today.

That is one of the reasons why we are working closely with the banking industry to develop this Valley National Bank pilot program where we would use the computer systems in the collection process to handle return items. We think that proposal shows a lot more promise than the program that we are operating in Dallas because again, it showed that we only can speed up the return process for about 30 percent of the checks.

Mr. BARNARD. Do you have a target date as to when that might be——

Mr. MCENTEE. It will be starting the first of November. It will be running for 3 months. We hope to have a study completed on the evaluation of that program in the early part of next year, and at that time the Federal Reserve will make a decision whether to put something out for public comment.

I might add that for this system to work, we would need some additional authority that was outlined in Vice Chairman Martin's testimony. We would have to have the authority to impose certain conditions on payor banks or the payor banks probably would not participate in the program.

Chairman ST GERMAIN. You would find very sympathetic ears to those recommendations.

Mr. **Barnard**. I was beginning to say I wouldn't speak for the Chairman but I don't think you would have a lack of support from this committee.

Thank you, Mr. Chairman.

Chairman **St Germain**. We want you to stay, Mr. McEntee.

Provisional credit, what is the usual time, 2 days as we have heard yesterday? Or Mr. Martin?

Mr. **Martin**. That is a reasonable assumption, I think, in most cases, yes, sir.

Chairman **St Germain**. Does that vary from region to region, Federal research region to Federal research region, or is it consistent?

Mr. **Martin**. You may have some remotely located institutions over which there would be variance. Of course, that differs from each section of the country.

Chairman **St Germain**. It is a funny thing, the people who testified yesterday said, and this is the industry now, this is not consumers, it was 2 days. Was that an inaccurate statement?

Mr. **Martin**. No, I don't think so. I think it was accurate.

Chairman **St Germain**. There may be exceptions.

Mr. **Martin**. Yes, there may be exceptions. But for the most part, as a reasonable generalization, yes.

Chairman **St Germain**. How long does it take to notify the institution after provisional credit has been granted? What is the time period for notification that provisional credit, or that credit, has been revoked because the check was nonsufficient?

Mr. **Martin**. With the return notification process which unfortunately frequently uses the mail and other common carriers, together with the working day the bank has to determine whether or not a check is good you may be talking about 5 to 6 days.

Chairman **St Germain**. Thank you.

Mr. McKinney.

Mr. **McKinney**. Thank you, Mr. Chairman.

Governor Martin, it seems to me that if we are as endangered or the system is as endangered as some of the bank groups would tell us because of bad checks, that it would be well worth the money to get ourselves fully computerized and at least serve the public better as well as protect the banks.

I am always fascinated that I can go to, say to Randolph, ME, and show them this card and walk out of the store with a $70 fishing rod. The guy pokes a couple of buttons and transaction slides right through. In New York I run into LaGuardia airport, give them my card, zip, run up the stairs, pant, and I'm on the shuttle.

Chairman **St Germain**. What is that thing you showed us for the record, Mr. McKinney?

Mr. **McKinney**. This is a Master Card, also known as agony for the first 10 days of each month.

Chairman **St Germain**. A Master Card issued by which bank?

Mr. **McKinney**. Connecticut National Bank.

Chairman **St Germain**. Now we can find out if Connecticut National places a check hold.

Mr. **McKinney**. I have one by the City Trust Bank, would you like more?

Chairman **St Germain**. No, no; that is enough commercials.

Mr. McKinney. Isn't there some way that this electronic system could be brought into the banking business?

Mr. Martin. Yes, sir; you, one—one could see a banking or thrift institution checking on the credit and the credibility if you will, of each of the customers and establishing limits within the bank as they have on those cards the gentleman possesses, and if they were to go to that kind of analysis and credit judgment on every depositor and keep that file current in a computer and understanding that cost, they could provide the same kind of service.

Mr. McKinney. Wouldn't that make a lot of sense? Let's put it this way: I was on the Board of Directors of a then-small mutual savings bank. Of our on-floor transactions, 98 percent were with our own customers. For the other 2 percent, if we could take a check with all that electronic garbage on the bottom of it and run it through a telephone system into a central computer, say the Fed's or anyone's, and get an authorization on a credit limit basis, wouldn't we solve a lot of our problems, expedite the transfer, protect the banks, and protect the depositor and everyone else?

Mr. Martin. It certainly has the potential of protection, yes, sir.

Mr. McKinney. I am fascinated by competition. I handed the chairman several weeks ago an article in the New York Times called "New York Banks Are Crazy."

I have a real problem with the big banks and their multitudinous branches. It seems that a lot of the big banks don't want any new customers. I see a fomer ex-colleague, Bob Steele, touting his thrift every night on TV and giving you goodies to come aboard, but I send a kid up to Boston and he wanders into a big bank and wants to open an account and their reaction is, "We don't really want to do it."

I am not sure the competitive factors will keep banks pushing harder and faster, because the big banks don't seem to want the little depositor. There is one big bank in New York that wouldn't let you talk to a teller unless you had $5,000 in the bank. You had to talk to a machine.

It seems to me that with telecommunications, and money machines, we have the ability to take one of these little cards, get off the plane in LA, punch it into a machine and get yourself $250 cash, that we ought to be able to modernize the system.

I would hope that the Board would realize that in the long run, it would be a lot cheaper to modernize the system, both cheaper for the banks in reducing losses and certainly cheaper for the consumer who is caught dead in embarrassing situations. It is fine to be educated enough to know about wire transfers and everything else, but a lot of people don't, as you say in your own testimony, know or care about the process.

I always tend to come back to personal matters, but I remember saying to my daughter when she moved to Raleigh, NC with her husband, "papa will transfer, don't take a check. You are going to start out your married life in Raleigh, NC kiting checks all over town as you get settled."

But I really think it could be done with the proper type of magnetic computerized check, and/or card, and/or credit authorization.

My time has expired. Thank you very much, Governor Martin.

Chairman St Germain. Mr. McKinney, that little card isn't the solution. Remember when I told you yesterday about the copy editor at the Chicago number on the 19th of September last year. He deposited a check for $5,000 in the bank across the street in Chicago—this was across the street now, not within the city of Chicago, all right? The main office. That was on the 19th of September.

On the 24th, he decided he needed $50 so he took his card and put it in the ATM machine to withdraw $50. The machine said no way, José. Now he had $1,100 in there before he deposited the $5,000. Low and behold, he couldn't get 50 bucks. That is what—I don't know if the Michigan University survey told you about these little stories, but you see, that is pretty tough.

Mr. McKinney. If the chairman would yield for a moment. I would have to say in all honesty, that a computer is only as good as the person who puts the information in it and how correctly he does so. I realize things like this happen. I myself have received a credit card with a number that was considered to be invalid, but someone was punching in the numbers and they did it wrong.

Chairman St Germain. When he called the bank he was told he would have to wait for his $5,000 check to clear.

Mr. Schumer.

Mr. Schumer. Thank you, Mr. Chairman.

Mr. Martin, in 1984 you wrote in a letter to our good chairman, saying that banks would earn $290 million a year on the check float using conservative assumptions.

Do you think that is a proper amount for banks to earn on a float?

Mr. Martin. I don't have an opinion as to what is a proper amount. Those figures—we did the best we could to make an estimate just as we also estimated the losses to banks from the dishonored check process. That is the best estimate we could get.

Mr. Schumer. But you don't think that is a whole lot of money that shouldn't be——

Mr. Martin. I am sure that is a whole lot of money, yes, sir.

Chairman St Germain. Mr. Schumer, I think you should ask him, knowing the Fed as I do, what was that $290 million?

Mr. Schumer. Yes.

Chairman St Germain. I am sure that that is the minimum. Not the maximum.

Mr. Schumer. Right. I have always thought that was an extremely conservative estimate, but it is still a whole lot. Given that we agree that it is a whole lot of money, if you were the consumers of America, wouldn't you feel you were being——

Chairman St Germain. Ripped off?

Mr. Schumer. I was trying to think of a more delicate word, delicacy is not one of my fortés, but that, that at least there ought to be an effort to put more of that money which rightfully is theirs back in their pockets?

Mr. Martin. I think we are obligated to make every effort we can to shorten the collection process, to speed up the return process, to insist on disclosure. I think we need to do a number of things about this admitted problem. Yes.

Mr. SCHUMER. Next question, this deals with the number of checks that are held.

Someone from the Wells Fargo Bank yesterday—I think he was representing Consumer Bank Association—suggested that his bank placed on hold only 250 checks per day, and the ABA witness who was here yesterday cited two banks which claimed to hold less than ½ of 1 percent of the checks deposited with them.

Do you think that figure is typical of the industry?

Mr. MARTIN. The industry varies a good deal depending on geographical region, but those numbers are not outside the normal curve. It looks as though from the data we have seen that holds are placed on 1 in 1,000, 1 in 2,000, 1 in 800 checks, something of that sort, depending on where you are in the country.

Mr. SCHUMER. I believe if you look at these numbers even so, one in a thousand would still be a heck of a lot more than here, because I don't remember the number but he gave a very high number for the total number of checks that they had each day, I am not sure.

But in the same letter that I mentioned to you before, the 1984 letter, you said you assumed that 20 percent of all out of State checks and 5 percent of all local checks had holds on them.

Mr. MARTIN. Those are the assumptions we made to do the arithmetic, yes.

Mr. SCHUMER. Do you think those assumptions are high? Why do you use assumptions so different from experience?

Mr. MARTIN. If I may say this is a different base.

I think as you quoted the Wells Fargo gentleman, he was talking about all checks.

Mr. SCHUMER. Right.

Mr. MARTIN. All checks processed by the 300 or so Wells Fargo branches. The reference in our letter was for out-of-State checks, special checks.

Mr. SCHUMER. Twenty percent of out-of-State, 5 percent of local, sir.

Mr. MARTIN. I have not examined those data. I don't know that we have any fresher figure for you. That is the only data we have, sir.

Mr. SCHUMER. What made you pick 5 percent? It seems to me in all due respect, Mr. Martin, here you are telling me that 1 in 1,000 or whatever, and then when you do your study you choose 5 percent of all local checks—I may well be missing something here.

Can you help me out?

Mr. MARTIN. Well, I must admit to you that we didn't have an elaborate statistical sampling or an econometric model to come up with 5 percent. We assumed the 5 percent and 20 percent in order to get a number. It wasn't based on a Michigan study or anything of that sort.

Perhaps we did you a disservice by those numbers. We did the best we could.

Mr. SCHUMER. That is OK. That is fair enough. We try, too.

On page 8 of your testimony you mentioned the 1985 consumer survey that the Fed always does.

Mr. MARTIN. Yes, sir.

Mr. SCHUMER. You said there was an increase in reported problems with delayed fund availability from the 1983 figure. What was the percentage increase? Was it a large increase? Can you give us the actual percentage?

Mr. MARTIN. It wasn't a large increase, but it was an increase. Let's see if we have the number at hand.

Thirteen up to 15 percent, a 200 basis point increase in the proportion.

Mr. SCHUMER. All right. Why do you think there was that increase?

Mr. MARTIN. I don't think we have enough data. This wasn't a focused group or some technique that would get into it in depth. This was a statistical sample—you know, have you had any trouble, yes, no—we don't have a good answer, sir.

Mr. SCHUMER. Fine.

Another question: As I understand it, I wasn't here and I may be incorrect so I apologize, but in response to a question from my colleague from Ohio, Mr. Wiley, on catching check fraud that a very high proportion of bounced checks don't make the round trip from the bank of deposit and back during the average hold period. Is that basically what you said, paraphrasing it?

Mr. MARTIN. Mr. McEntee indicates that 15 percent of the checks take 10 or more calendar days to be returned.

Mr. SCHUMER. Fifteen percent, not 50 percent. Right?

Mr. MCENTEE. Fifteen percent, that is right.

Mr. MARTIN. One-five.

Mr. SCHUMER. My time is expired, but——

Chairman ST GERMAIN. Yes, I think it has.

Mr. Martin, or Mr. McEntee, did you ask the Michigan survey team to survey the employees of the Federal Reserve Board in Washington and in the Federal Reserve regional banks, to see if they had had any problems with delayed funds availability?

Mr. MARTIN. No, sir, we anticipated that the research center with its reputation would reject any suggestions of ours as to what the composition of the sample should be.

Chairman ST GERMAIN. No, no, you didn't answer my question.

Forget the University of Michigan. With all the resources of the Fed, might I suggest—would you do a survey of the employees of the Fed, send the letters out to all your employees in the regional banks as well as here in Washington, and ask them if they have had any problems with delayed funds availability check holds?

Mr. MARTIN. Yes.

Chairman ST GERMAIN. Will you do that for us?

Mr. MARTIN. Yes, sir.

Chairman ST GERMAIN. I bet you would be fascinated with the results.

I remember Arthur Burns when he came up here and talked to me about direct deposit. Mr. McEntee, have you been at the Fed for a little while?

Mr. MCENTEE. Yes, I have.

Chairman ST GERMAIN. How long?

Mr. MCENETEE. Twelve years here in Washington.

Chairman ST GERMAIN. Twelve, well, I recall his coming up here and telling me that one of the big problems on direct deposit, you know of payroll checks, was that a lot of the majority of the people at the Fed didn't want any part of it, remember that?

Mr. McENTEE. That was true several years ago because the program was not well tested. That is not the case now. I believe that about 80 percent of the employees at the Federal Reserve Board participate in that program.

Chairman ST GERMAIN. I am just illustrating a point.

Mr. McENTEE. Yes.

Chairman ST GERMAIN. You agree that back then that was accurate. I don't think Arthur was lying to me. What I am trying to say now is that maybe you ought to survey the employees of the Fed. If you find a high percentage of them, like 13 or 15 percent, have had these problems, maybe that will get you off your little—you know what—motivate you?

I will say it that way.

Mr. McENTEE. A lot of us use credit unions.

Chairman ST GERMAIN. I am going to have to absent myself. There is a meeting that I had no control over calling that is being held on the Senate side with reference to a local problem. We have dual constituencies, one is the constituency that comes within the jurisdiction of the committee, the other is the constituency that elects you. Of course, that is a very important one.

I am now going to absent myself, but I am very fortunate that Congressman Annunzio has agreed to take over the subcommittee in my absence. I do hope you will excuse me and understand.

Mr. ANNUNZIO [presiding]. I thank the chairman.

Mr. Schumer, you finished testifying.

Mr. Parris.

Mr. PARRIS. Thank you, Mr. Chairman.

Just two quick questions.

Governor, we had testimony yesterday that the benefits to an individual who issues a bounced check to our typical financial institution, the benefits exceed the cost to the institution of that return item.

I sat here and doodled a little and these are reasonably close numbers, in my part of the world called Virginia across the river here, last time I heard it cost $15 for a returned check. I hear that frequently from my children, frankly. I think that is accurate. Fifteen bucks when their checks come back.

It was reported in the Wall Street Journal, Mr. McKinney just told me, that $25 is the cost of a returned check in Connecticut, the Wall Street Journal says the charge is $30 in some places. If you take a $15 charge for a bounced check and the average hold in my view is something around 10 days or thereabouts, if you assess the 10-percent annual interest rate on that period, you have to kite or bounce checks in the amount of $4,800 or more, in my mathematics, in order to get more benefit from that than the $15 fee that it costs.

Yet the check we are talking about in terms of 3 days clearing is over $100. Do you see anything wrong with my little exercise here?

Mr. MARTIN. Well, certainly the net to the institution out of the fee itself is a substantial net income.

Mr. PARRIS. Right.

Mr. MARTIN. You have to balance that against their cost of operation; you know, their total cost of operating the institution.

Mr. PARRIS. So that the fees that are assessed are really a kind of punitive measure to discourage the issuing of invalid instruments.

I don't quarrel with that principle. But it seems to me that if you charged $30 for what is sometimes an honest mathematical mistake, it grossly exceeds the amount of the actual discomfort or loss to the institution, does it not?

Mr. MARTIN. If it is an honest mathematical mistake, the depositor should talk to the platform officer and say, "Get this off the statement," and he will get it off the statement.

Mr. PARRIS. Do you think he would?

Mr. MARTIN. That is what you have platform officers for.

Mr. PARRIS. Well, maybe your view of the world and mine is slightly different.

Mr. MCKINNEY. Would you yield for a minute, Stan?

Mr. PARRIS. Sure.

Mr. MCKINNEY. I have had complaints from my wealthier constituency at the western end of the district that they have CD's in banks and trust deposits and accounts in banks and everything else, and still they get charged for an overdraft.

In essence, is that right, do you think, if a bank is sitting there with somebody who has a $10,000 CD and a custodial account in the trust department and the bank charges him for an overdraft?

Mr. MARTIN. If you have the CD's with the bank and you don't employ your leverage as a customer to get that cost off your statement, you deserve to have the cost on your statement.

Mr. PARRIS. Caveat emptor.

Let me just ask one other quick question, Governor, if I might. There are some who suggest that Federal legislation is required to accomplish some control over the problem here. They say we have to have Federal law because the Federal Home Loan Bank Board and NCUA have suggested to their membership that Federal law preempts the State law that has recently been adopted in various States regarding the holding periods and clearance requirements and that sort of thing.

Do you agree with that interpretation?

Mr. MARTIN. I believe we should respect State law whenever we can. I believe that the actions in California and New York illustrate the differences between and among the States in that each of those State legislatures took a somewhat different approach to addressing their problem.

I think, on the other hand, that an issue such as the return of dishonored checks, because it involves the national payments system, we need to do something nationally. So I think it depends on what aspect of the problem we are dealing with. I think return items ought to be national. But where the States can come in and do the job, and do it pursuant to the particular characteristics of that State, I think we should let the States do it.

Mr. PARRIS. Would you agree that under the current status of the law or lack thereof in terms of the Federal requirements, that institutions do not have to comply with the recent State laws?

Mr. MARTIN. Mr. McEntee indicates to me that that is the Federal Savings and Loan/Home Loan Bank Board approach.

Mr. PARRIS. All right.

Mr. MARTIN. It is difficult to quarrel with their statement.

Mr. PARRIS. Thank you very much. My time has expired.

Mr. ANNUNZIO. Mr. Cooper, you are recognized for 5 minutes.

Mr. COOPER. Thank you, Mr. Chairman.

Governor Martin, I would like to follow up on Mr. Parris' line of questioning of where the dividing line is between proper State authority and the Federal role in this matter. As I understand what you just said, the lack of law for Federal S&Ls, that is sufficient in the eyes of the Federal Home Loan Bank Board to override State statute?

Mr. MARTIN. I was just repeating the statement that I understand had been made there. I am not an expert on the current Federal Home Loan Bank Board position. I defer to Chairman Gray or one of the members of that Board.

Mr. COOPER. I understand the legal situation. If it would amount to a Federal override, I am not familiar with that. Perhaps it is true.

Could you be more precise in differentiating between the national role on return items, that it should have, and the local role the rest of the check availability mandatory schedules should have with the local decisionmaking that should be involved there?

Take a State like Montana, which is a large western State. Exactly where would you see the State legislature in that State being able to come to its own conclusion and still have that be part of a legitimate national payment system?

Mr. MARTIN. I would think the legislature of that State is well-positioned and can address the question of delayed availability in Montana, as far as State-chartered institutions are concerned. I would believe that they could take action in the disclosure area. They could take action in deciding whether or not to empower their banking superintendent or the appropriate official of that State government as to whether or not that official should set mandatory availability schedules for the State institutions.

It is at the point wherein we are talking about interstate movement of checks and wire transfers and return items that I think it calls for a national approach. Of course, our experience with other consumer legislation and implementation is that there are States that, acting on their own to protect their consumers, will have a more constraining set of statutes and regulations than the national ones.

Mr. COOPER. I am afraid I still don't understand.

Are you saying a check drawn on a Montana bank payable to a business in Montana, that that should have special rules that could be different from a check that was drawn across State lines?

Mr. MARTIN. I am saying that if this is a State-chartered bank, the State of Montana has chartered it, that it is certainly our experience in the dual banking system that it may well be that State authorities and State regulations could well protect the consumers in Montana by the various rules and regulations applying to those transactions. And it would work perfectly well.

Mr. COOPER. So, if you had a large banking organization with different offices in different States, they would have to each accustom themselves to the local requirements?

Mr. Martin. The bankers will tell you that—that as they operate more and more interstate, that they are subject to all these different State laws. But one has to weigh that against the long, long historical experience we have with State regulation.

I am an ex-State regulator myself. I think I did a pretty good job in California. I was doing that work there.

Mr. Cooper. One last point. You said that a majority of the Board is against imposition of a fixed schedule.

Could you give us some indication of what the vote is and who votes which way?

Mr. Martin. We had one dissenter from our position on this, Congressman.

Mr. Cooper. Is it public knowledge who that is?

Mr. Martin. Who felt mandatory availability schedules should be imposed by the Congress?

Mr. Cooper. Is it possible for us to know who that Governor is?

Mr. Martin. May I submit that in writing to you?

Mr. Cooper. If it is privileged information, certainly.

Mr. Martin. I would be glad to submit that.

[The response from Mr. Martin to a question submitted by Mr. Cooper follows:]

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
United States House of Representatives
Washington, D.C.

Dear Chairman St Germain:

At the October 10 Subcommittee hearing on H.R. 2443, Mr. Cooper requested the name of the Governor who favored mandatory availability schedules as a means of dealing with the delayed availability problem.

The Board discussed the draft testimony on October 7. Governor Rice, Governor Seger, and I voted to oppose mandatory availability schedules; Governor Partee voted to support them. Chairman Volcker and Governor Wallich were absent.

I hope this information is useful. Please let me know if I can be of further assistance.

Sincerely,

/s/ Pres

Preston Martin

Mr. **Cooper**. Thank you, Mr. Chairman. I have no further questions.

Mr. **Annunzio**. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. **Annunzio**. You are recognized for 5 minutes.

Mr. **Bartlett**. Governor, let me begin by asking you whether implementation of H.R. 2443 in your opinion would be feasible to achieve these availability limits?

And on page 10 of your testimony—another part of that question—you seem to imply there that it couldn't be done without a wholesale transfer to electronic banking. I paraphrase you there.

My question is, though, two-fold. Are the limits in 2443—if this Congress were to enact this law with these limits, would it be feasible, and would it require, or would the effect of the bill be to mandate check-less society? Is that what you are telling us?

Mr. **Martin**. It would come close to requiring a completely electronic system with all of the costs of investment by the Fed and by the private banking system, because 1 day availability—even using electronic means—does not seem to be a feasible period of time.

We implore the committee to give us a chance to come back with, from time to time, a periodic report to the committee as to our progress and our objectives with regard to numbers of days, and back with how well we have accomplished such objectives in number of days. But to prescribe it in statute, we feel would not just be feasible.

Mr. **Bartlett**. We Presbyterians have a saying: Be careful what you pray for, because you might get it.

The other part to the question is, would H.R. 2443, in its present form—would we be praying for or mandating higher service charges on consumers because of higher costs? Would there be higher costs involved? In your judgment, how would financial institutions recoup them?

Mr. **Martin**. There would be higher costs involved because of the necessary capital investment in computers, software, and personnel. There would be higher costs because there would be, we believe, a higher ratio of losses. And a 3-day hold when it takes 5 days to complete the transaction is of no use to the holder. Those costs have to be passed on in either one of two ways: either by raising fees or by cutting the return on investment in the commercial bank.

Cutting of the return, of course, makes it difficult for them to raise capital. We want them to raise more capital. We want banks to have higher net worth ratios. So, as a supervisor, we are not happy with a situation which (a) requires a lot of capital investment in computers, and (b) begins to mitigate against the banks accumulating capital at a rate that we——

Mr. **Bartlett**. Taking all that into account, in your judgment would legislation like this result in higher service charges for consumers?

Mr. **Martin**. Yes, sir. I think almost inevitably it would.

Mr. **Bartlett**. I wonder if you could also comment on whether some additional and substantially beefed up disclosure requirements, whether it is legislated or regulated, would be in order? That is, to me it seems—I think you have testified, and others have, I believe, and in my judgment it appears to be correct, that the competitive marketplace doesn't seem to be working as well as we would want it to. Perhaps that is because of lack of disclosure.

Would you advocate some sort of—whether legislated or regulated by the Fed—of substantially increased and uniform disclosure of check hold regulations and other procedures by the bank or financial institutions?

Mr. MARTIN. I think required disclosure is appropriate. I must say, however I am disappointed in the results of the Michigan study and the other data we have with respect to disclosure. It has improved, but I don't think it is improving fast enough.

I would support mandatory disclosure. We would hope that we could work with our people experienced in the consumer protection area within the Fed to come up with a basis for these institutions that would be protective of the consumer and not be too expensive.

Mr. BARTLETT. So you would support mandatory uniform disclosure?

Mr. MARTIN. Yes, sir.

Mr. BARTLETT. Thank you, Mr. Chairman.

Mr. ANNUNZIO. Mr. Schumer, we have another panel. I would appreciate your cooperating with the Chair in expediting the hearing, but you may have a few more minutes.

Mr. SCHUMER. I have just one other question for Mr. Martin, and that is: The largest bank in Washington, the Riggs Bank, they make all funds available within 1 or 2 days. Their fees are not any higher. They seem to be doing pretty well.

Why are they able to do it, and why do you think it is so difficult for so many other institutions to do it?

Mr. MARTIN. My impression—without any statistical basis whatever—my impression is that Riggs is an aggressive marketeer in this submarket. They are effective in their marketing area. And one way they are effective is to incur the costs that are involved in that kind of availability schedule. And I am all for it. That is competition working.

Mr. SCHUMER. Thank you, Mr. Chairman.

Mr. ANNUNZIO. Thank you, Mr. Schumer.

I want to thank you, Governor Martin and Mr. Mack, for your being with us this morning. Your constructive testimony has been very helpful. Hopefully, the committee will be able to expedite the legislation.

Thank you very much.

Mr. MARTIN. Thank you.

Mr. MACK. Thank you, Mr. Chairman.

Mr. ANNUNZIO. Now I would like to have Franci Livingston, Alan Fox, Michelle Meier, and Michael Caudell-Feagan come to the witness table, please.

On behalf of the Subcommittee on Financial Institutions, I welcome our four distinguished panelists this morning. If you have prepared statements for the record, without objection each of your statements will be made part of the record. Each witness will have 5 minutes for testimony.

We will begin with Ms. Livingston, staff attorney of Congress Watch.

STATEMENT OF FRANCI LIVINGSTON, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Ms. LIVINGSTON. Thank you, Mr. Chairman.

I appreciate the opportunity to testify on H.R. 2443, concerning delayed funds availability and would like to commend Chairman St Germain for his leadership in stopping unjustified holds and for holding these hearings today.

I would also like to thank you for your leadership on consumer issues and would like to commend the other members of this subcommittee who have introduced delayed funds legislation.

The consumer groups testifying today are in agreement on our position on check holds and on H.R. 2443. Thus, to avoid repetition, and with your permission, Mr. Chairman, each of us will address a different aspect of our written testimony. I will describe the holds problem; Alan Fox will describe why lengthy holds are not justified by bad check losses; Michelle Meier will suggest shorter holds than those contained in the bill; and Mike Caudell-Feagan will discuss the failure of voluntary action in this area.

The check hold problem is not a new one. This subcommittee knows only too well that the past 7 years have brought us delayed funds studies, recommendations, and promises of voluntary action. These efforts have not, for the most part, curbed the abuses that bring us here today and that have made check hold legislation a priority for consumer organizations.

Lengthy holds have caused widespread frustration, hardship, and monetary loss to consumers. Consumers are angered by delayed funds availability because they do not understand why, in an age of computer processing and instantaneous global communications, they have to wait for access to check funds, sometimes for up to 1 week, just to get money from a check drawn on a bank down the street.

A recent letter to Public Citizen from a consumer in Chicago tells the story. Routinely, this man's bank put a 3- to 5-day hold on his paychecks, though his employer's bank was just a block away. Attempting to avoid the delay, he opened an account at his employer's bank. He deposited a cashier's check for this purpose, only to have the new bank impose a 1-week hold on the cashier's check.

He writes: "If I could have, I would have told the new bank where they could go. I didn't because I moved my accounts there to escape 3- to 5-day holds on future paychecks."

Unfortunately, his problem is not over. The new bank puts a 3- to 5-day hold on his wife's checks drawn on another bank.

Surveys conducted by the Federal Reserve in 1977, 1981, and 1983 reveal that 12 percent, 20 percent, and 11 percent, respectively, of people with checking accounts have experienced problems with delayed funds. Based on these figures, it is estimated that between 5.5 million and 10 million Americans have experienced problems with delayed funds at some time.

These figures do not even include, however, those who have had to work around hold policies; for instance, those who must wait to make needed purchases until the hold period has expired.

This morning, the Federal Reserve has told us that that figure has gone up to 15 percent, even though in the past couple years there has been a lot of pressure on banks to improve their hold policies.

The extent of the delayed funds problem has been documented by consumer groups, as well. In March 1985, Congress Watch conducted a study of 31 banks and savings and loans in the Washington, DC, area. The major findings of this survey are: 35 percent of financial institutions said they hold DC checks for 5 or 6 days; holds on out-of-State checks range from 2 days to 3 weeks; holds on Maryland and Virginia checks range from 1 to 10 days.

Half the institutions said they impose holds on payroll checks, and one-fourth said they impose holds on U.S. Government checks—one financial institution for 3 weeks.

Nationwide, the U.S. Public Interest Research Group found that 20 percent of financial institutions hold out-of-State checks for over 2 weeks.

There are some banks, however, that apparently find no reason for long hold policies. We were glad to hear today that the credit unions are also in that category.

Two banks in the Congress Watch survey have 1- to 2-day funds availability for all checks, whether local or out of State; and another bank has 1- to 2-day availability for area checks, and 3-day availability for out-of-State checks.

Lengthy holds are hard on consumers in a variety of ways. Consumers may be subjected to bounced check charges when their funds are deposited, but a hold makes them unavailable. We estimate the check holds are costing consumers $125 million a year in bounced check charges alone.

The fact that hold policies can result in unexpected bounced check costs is not surprising. The Federal Reserve reports that 43 percent of respondents to a 1983 survey only discovered their institutions had delayed funds policies when they experienced problems.

In addition to bounced check charges, consumers may be assessed bad check fees or late payment penalties by merchants or creditors. A consumer's credit rating can also be impaired.

Lengthy hold periods are especially hard for consumers living on fixed incomes. Holds force these people to wait several days or longer to use needed funds from welfare or Social Security checks.

Thank you.

[The prepared statement of Ms. Livingston follows:]

STATEMENT OF FRANCI LIVINGSTON
STAFF ATTORNEY
PUBLIC CITIZEN'S CONGRESS WATCH

BEFORE THE
HOUSE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

ON

H.R. 2443, THE "EXPEDITED FUNDS AVAILABILITY ACT"

OCTOBER 10, 1985

Mr. Chairman and members of the Subcommittee:

I am Franci Livingston, a staff attorney at Public Citizen's Congress Watch. Congress Watch is the lobbying arm of Public Citizen, a consumer organization founded by Ralph Nader in 1971. Public Citizen is supported by 80,000 members nationwide.

I appreciate the opportunity to testify on H.R. 2443 regarding delayed funds availability or "checkhold" practices and commend you, Mr. Chairman, for your leadership in stopping unjustified holds and for holding hearings on the problem. I would also like to commend the other members of this Subcommittee who have introduced delayed funds availability legislation.

The checkhold problem is not a new one. Lengthy holds have caused widespread disatisfaction and often hardship among consumers. This Subcommittee knows only too well that the past seven years have brought us delayed funds studies, recommendations, and promises of voluntary action. These efforts have not, for the most part, curbed the abuses that bring us here today and that have made checkhold legislation a priority for consumer organizations.

Congress Watch strongly believes that federal legislation is the only way to end unjustified holds imposed on our funds deposited by check. We support the approach taken in H.R. 2443, namely maximum limits on hold periods, disclosure of financial institution hold policies, payment of interest from the date of deposit, and enforcement through administrative orders and private actions. However, we also believe that some changes should be made in the bill, including shorter hold ceilings.

I. The Problem

Delayed funds availability refers to the delay between the time a customer deposits funds by check and when the funds are made available to him or her by the depository institution. Consumers are angered by delayed funds availability because they do not understand why in an age of computer processing and instantaneous global communications they have to wait for access to check funds, sometimes for a week just to get money from a check drawn on a financial institution down the street.

A recent letter to Public Citizen from a man in Chicago illustrates the problem. The man explains that his bank routinely imposed a 3 to 5 day hold on his paychecks drawn on the employer's bank a block away. This man attempted to solve the hold problem by opening an account at the employer's bank and deposited a cashier's check drawn on his old bank for this purpose. The new bank imposed a one week hold on this cashier's check. He writes: "If I could have, I would have told the new bank where they could go -- I didn't because I moved my accounts there to escape the 3 to 5 day hold on future paychecks." Unfortunately, the problem is not over. The new bank is imposing a 3 to 5 day hold on his wife's checks drawn on another bank.

The extent of the delayed funds problem has recently been documented by consumer groups across the country. A March 1985 survey of 31 Washington D.C. banks and savings and loans by Congress Watch examined the checkhold policies for the following types of checks: 1) D.C. checks; 2) Maryland checks; 3) Virginia checks; 4) checks from outside the local area; 5) payroll checks; and 6) U.S. government checks. We asked the financial institutions how many business days they hold checks from each of these categories. The survey found that hold policies can be extremely long, though they vary widely, ranging from 1 to 6 days on D.C. checks and from 2 days to three weeks on out-of-state checks.

Approximately 35 percent of the financial institutions said that they hold D.C. checks for 5 or 6 days. Holds on Maryland and Virginia checks range from 1 to 10 days; about 35 percent of the financial institutions said they put at least a 5 day hold on them. One-half of the financial institutions said they impose holds on payroll checks and one fourth said they impose holds on U.S. government checks, one financial institution for three weeks.

Some banks however, apparently find no reason for long hold policies. Two banks surveyed have 1 to 2 day funds availability for all checks whether local or out-of-state and another bank has 1 to 2 day availability for area checks and a 3 day availability for out-of-state checks.

Nationwide, the Federal Reserve reports that eleven percent of accountholders experienced specific problems due to delayed funds availability.[1] Even this percentage understates the problem. The survey includes current accountholders only and thus does not reflect any persons who might have pulled out of the banking system because holds separated them from needed Social Security or other funds for too long a time period. Also, the survey does not account for those who have learned to work around financial institution hold practices in their monthly budgeting.

Frustration over delayed funds practices is sufficiently pervasive that when a San Francisco reporter wrote an article criticizing checkhold practices and urging Californians to contact State Assembly Speaker Willie Brown about pending legislation, over 8,000 people responded.

Lengthy holds work hardships on consumers, the most obvious being that consumers are denied access to their funds for the length of the hold. The argument that financial institutions often pay interest on held funds and therefore that holds are of little consequence does not address the problem for many consumers: non-interest bearing accounts amount to $309.3 billion, triple the amount of funds held in negotiable order of withdrawal (N.O.W.) accounts. The only purpose of an account for a consumer holding a non-interest bearing account is to have access to the funds.

Delayed availability is particularly hard for consumers living on fixed incomes. Holds force these people to wait several days or even longer to use needed funds from welfare or social security checks.

Depositors may also be subject to bounced check charges imposed when funds are deposited but a hold has made them unavailable. We estimate that financial institution checkholds cost consumers $125 million a year in bounced check charges alone,[2] as much as ten times the amount financial institutions lose due to bad checks.[3]

The fact that hold polices can result in unexpected bounced check costs is not at all surprising. The Federal Reserve reports that 43 percent of respondents to a 1983 survey who said their institutions had delayed funds policies had only discovered that policy when they experienced problems.[4]

In addition to bounced check charges, consumers may be assessed bad check fees and/or late payment penalties by merchants or creditors. A consumer's credit rating can also be impaired.

II. No Justification for Long Holds

Long hold periods are not imposed because a depository institution is waiting for money deposited by check to "come through." Depository institutions quickly forward deposited checks to clearinghouses, either a branch of the Federal Reserve or a large commercial bank. The clearinghouse sorts the checks received and then routes them to the financial institution on which they are drawn (the payor institution). The clearinghouse also credits the account of the depository institution for the check amount. On receipt of credit, the financial institution can invest the funds.

Depository institutions get credit for funds deposited by check based on availability schedules. These schedules reflect how long it takes for a check to travel to the payor institution for payment. Federal Reserve figures are that 99 percent of checks clear (the financial institution gets credit for the funds) in 1 or 2 business days. The rest clear in three days.[5]

The Federal Reserve Bank of Richmond, Baltimore Branch availability schedule, for example, does not show a delay greater than 2 days no matter whether a check is going from the Reserve Branch to Philadelphia, Helena, or Los Angeles. Thus in no case represented by the schedule (schedule does not have listings for Alaska or Hawaii) would more than two days go by before a depository institution had, and could invest, funds deposited by check.

If the check is good the payor institution pays the funds to the clearinghouse and the process is complete. Depository institutions do not receive notice that a check is good, nor do they wait for the funds to be paid since they have already been credited.

If a check is bad, the payor institution usually does not notify the depository institution directly but rather returns the check unpaid through the clearinghouse to the depository institution. A depository institution must return money advanced by the clearinghouse if a check returns unpaid, though losses because of bad checks are minimal.

The check return process is slower than the check forwarding process. Not surprisingly, the check forwarding system is highly automated and involves magnetic coding, high speed processing machines, jets and overnight couriers so that financial institutions can get credit and use of the depositors' money very quickly. The return process, however, involves manual sorting processes, often relies on the mail and the check retraces the path it followed en route to the payor institution instead of being returned directly to the depository institution.

In sum, though return times are slow, financial institutions do not wait long to get funds that have been deposited by check.

Bad check losses similarly do not justify long hold policies. The presumption underlying the check-clearing system is that the vast majority of checks are good. Federal Reserve figures are that 99 percent of all checks are paid the first time through the collection process. Clearinghouses are acting on this presumption when they grant depository institutions almost immediate credit for checks.

Losses to financial institutions from the one percent of checks that do return unpaid are extremely low. More than 60 percent of returned checks are for less than $100.00 and approximately half are paid the second time through the collection process. Most returned checks do not result in losses because the financial institution usually recovers from the depositor.[6] Only one in 5,245 returned checks results in loss to the financial institution.[7]

There is no reason to believe hold ceilings will significantly increase bad check losses due to insufficient funds, check-kiting schemes or forgery. Most consumers simply do not want to write bad checks and would make good on a bad check if they did. Moreover, bounced checks are discouraged by high overdraft fees, merchant or creditor penalties and embarassment.

Check-kiting is a sophisticated crime that usually requires expert manipulation of the check-clearing system. For instance, a check-kiter can tamper with the magnetic code on a check so that the check cannot be properly routed. The kiter will be long gone by the time the financial institution discovers that the check is bad, and a hold period would not have been effective against the scheme.

Check-kiting can also be a scheme where through a series of transactions involving a number of financial institutions a kiter creates artificial balances by writing checks that are covered not by good funds but by other checks. The kiter makes money by eventually cashing a large check.

This type of scheme is not a reason for rejecting legislation that shortens hold periods. First, even today, the scheme would probably not be detected during the holds used by a number of financial institutions because the check would return unpaid after the hold had expired. A three week survey of return items by a New York savings institution and summarized by the United States League of Savings Institutions, for example, showed that the forward and return process "almost always exceeded the hold period and usually by a significant number of days." The U.S. League notes:

> . . . while the association uses the equivalent of a seven-day hold for items drawn on institutions in metropolitan New York, only 1% of checks returned by local institutions were received within the seven-day hold period. About 90% took at least 10 days to be returned, 54% took at least 13 days, and 10% took more than 15 days.
>
> The association had a similar experience with items drawn on institutions outside the metropolitan area. For these items, the association uses the equivalent of an 11-calendar-day hold. About 10% of these return items were received within 11 calendar days. About 60%, however, required at least 16 days to be returned and 10% took at least 20 days to be received.[8]

Second, financial institutions' exposure to such schemes can be minimized through exceptions to the shortened hold periods for new accounts, for checks that present a high risk of loss as determined by the Federal Reserve, and for checks over a specified amount. A kiter is only likely to engage in a high-risk scheme for high stakes. Third, technology is available that flags unusual account activity and allows financial institutions to detect check-kiting schemes.

Similarly, forgery should not be a reason for rejecting shortened hold periods. A forged signature would probably be detected either by the payor institution or by an accountholder upon receiving the monthly statement. Notice from a payor institution that a check was forged would not reach a depository institution before the holds many financial institutions already use for the same reasons cited regarding check-kiting, and holds would probably never prevent against losses due to forgeries where the forgery is discovered only upon receipt of the monthly statement.

A forged endorsement would likely be in the form of a double endorsement since a forger would not be interested in depositing the check in the account of the real payee. Delayed funds legislation could provide an exception for double endorsed checks.

One reason for long hold policies is simply that financial institutions have no incentive to shorten them. Preston Martin, when asked about whether financial institutions colluded to set hold policies, stated:

> Indeed, we have a problem here because of an opposite attitude of bankers toward this problem. To them it isn't a problem, to them it isn't high enough priority to get their attention.[9]

This inattention is not surprising since long hold policies are very profitable. Financial institutions can make millions annually off the funds invested while checks are on hold.

III. H.R. 2443

H.R. 2443 provides that the Federal Reserve Board has up to five years to develop a system that would allow funds availability in 1 to 3 intervening days for all checks. In the meantime, an availability schedule is established that ranges from 1 to 8 intervening days depending on the category of check. Exceptions from the hold ceilings are set forth, including exceptions for new accounts, checks over $5,000, and accounts that have three overdrafts in six months. Depository institutions are required to disclose hold policies before an account is opened, when a deposit is made, and when significant changes are made in the hold policy. Notices of the hold policy must be posted in locations where deposits are taken. And financial institutions must pay interest on interest-bearing accounts from the business day on which a deposit is made.

Congress Watch supports the three-pronged approach of H.R. 2443, including mandated hold ceilings, disclosure, and payment of interest from the date of deposit. We strongly believe, however, that the hold periods should be shortened.

The periods we suggest are as follows: next day availability for checks under $100 and checks drawn on any branch of the same depository institution in the same Federal Reserve District; 2 day availability for checks drawn on any financial institution in the same Federal Reserve District; and three day availability for checks drawn on financial institutions from outside the Federal Reserve District.

This availability schedule roughly parallels the schedule for when a financial institution obtains credit for a check. Under this schedule, consumers would have access to funds roughly when the financial institution does. The reason for these ceilings is that delayed funds availability schedules for consumers should recognize that ninety-nine per cent of checks are good, that institutions are able to recover from customers in most instances where checks are returned and that present holds often do not serve to protect against check-kiting or forgery schemes. Financial institutions can be protected against possible losses by the exceptions for high-risk checks already mentioned instead of penalizing most consumers.

In 1979, an American Bankers Association - Federal Reserve Task Force put forth a similar proposal, although the Task Force called for a flexible and not a legislative approach. The Task Force said that banks:

> should retain the flexibility to provide established, financially responsible customers with funds availability on a schedule at least equal to the receipt of provisional credit by the bank (when the bank gets credit from the clearinghouse) without extending similar funds availabilty (sic) in situations that may involve crime or financially irresponsible individuals.[10]

This, in effect, means 1 to 3 day availability and exceptions in high risk cases.

IV. Disclosure

Section 8 of H.R. 2443 provides for hold policy disclosure at various times including the time of deposit. The bill provides that at the time a deposit is made a depository institution can disclose a hold policy by preprinted deposit slips or by specific notice of the day a customer may withdraw funds where funds may not be immediately available for withdrawal.

General disclosure on deposit slips should only take the place of specific disclosure where the financial institution is following its blanket policy. Where the financial institution invokes an exception or does not follow its usual hold policy, a consumer should be given specific notice that the usual policy will not govern and should be informed of the hold period. This specific notice would, of course, not be possible for deposits made by automatic teller.

In addition, section 8 requires that significant changes in a hold policy be mailed to customers. We agree that such notice is important, but believe notice should occur before the change and not after as is currently provided in the bill.

V. Relation to State Laws

Section 6 of H.R. 2443 provides that states are free to adopt checkhold laws that mandate shorter time periods than federal law for checks deposited in institutions chartered by that state.

We strongly believe that any federal consumer protection statute related to banking that sets standards, but at the same time allows states to enact stronger consumer protection laws should not suggest that stronger standards would apply to state-chartered institutions only. The current provision would not only allow a double standard for funds availability in the same state but would frustrate state efforts to protect consumers since state institutions would argue that strong state laws would put them at a competitive disadvantage with national banks.

VI. Liability Standard

Section 13 of H.R. 2443, concerning civil liability recognizes the importance of providing remedies to consumers wh incur damages as a result of violations of the Act. This secti is essential for both enforcement and compensation. Section 13(sets the liability standard:

> (1) A depository institution may not be held liable in any action brought under this section for a violation of this Act if the depository institution demonstrates by a prepondenence of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
>
> (2) Examples of bona fide error include clerical, calculations, computer malfunction and programming, and printing errors.

This standard appears to cover only intentional violation though most violations of this act are unlikely to be by desig

We recommend the following liability standard:

> A depository institution may not be held liable in any action brought under this section for a violation of this title if the violation occurred exclusively as a result of circumstances outside the control of the depository institution.

This standard is appropriate because it imposes the losse on depository institutions for all events within their ambit o control. Any other standard would be grossly unfair, because cost of non-compliance by depository institutions would be imposed on consumers even though consumers lack any control ov the financial institution operations and procedures. The risk loss should be imposed on the party who is most able to avoid

VII. Conclusion

Federal checkhold legislation is needed to put an end to longstanding practices that are unfair and unjustified. The ceilings imposed should finally allow consumers to benefit from the recognition that most checks are good. We have seen several years of studies, recommendations, and assurances of voluntary action, but lengthy checkholds and the resulting hardships persist. Mr. Chairman, we deeply appreciate your leadership in this field, urge you to hold hearings on the other consumer protection bills introduced this year, and are ready to help in any way we can to ensure strong checkhold legislation.

Notes:

1. "Summary of Survey Research Center Survey of Consumer Experience With Delayed Funds Availability," Hearings on the Fair Deposit Availability Act before the Subcommittee on Consumer Affairs of the Senate Banking, Housing, and Urban Affairs Committee, September 28, 1983, at 42. (Hereafter "Senate Hearings").

2. 2.7 percent of the 360 million returned checks (9.72 million checks) were returned due to uncollected funds. Statement of Preston Martin, Vice Chairman of the Federal Reserve Board, Hearings on the Expedited Funds Availability Act before the Subcommittee on Financial Institutions of the House Committee on Banking, Finance and Urban Affairs, April 4, 1985 at 213. (Hereafter "House Hearings"). A 1985 study by Consumer Federation of America found that bounced check charges average over $13. Consumer Federation of America, "Bank Fees on Consumer Accounts," May, 1985, p.9. The 9.7 million bounced checks by consumers every year because of checks holds thus cost $125 million in charges.

3. _The Impact of Exception Items on the Check Collection System_, Bank Administration Institute, 1974.

4. "Summary of Survey Research Center Survey of Consumer Experience with Delayed Funds Availability," Senate Hearings at 40-41.

5. Statement of Preston Martin, House Hearings at 192, 212.

6. _Id_. at 193.

7. _Return Item Notification Procedures_, Bank Administration Institute (1979) at 22.

8. Statement of U.S. League of Savings Institutions, Senate Hearings at 199.

9. Senate Hearings at 20.

10. "Final Report and Recommendations of the Delayed Funds Availability Task Force," February 16, 1979 at 9-10.

Mr. ANNUNZIO. Mr. Fox.

STATEMENT OF ALAN FOX, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA

Mr. FOX. Thank you, Mr. Chairman, for the opportunity to present our views today on H.R. 2443. We certainly appreciate the attention that the subcommittee is paying to this issue. It is our hope that this is only the first of many attempts to look at the variety of consumer issues that have developed as a result of changes in the financial system over the past few years.

We note, Mr. Chairman, that your own subcommittee, the Consumer Subcommittee, is holding hearings on some related issues this month, and we appreciate that, as well.

As everyone here has said, the delayed funds availability is not new to consumers and not new to Congress. It has been the subject of hearings, discussions, debates, and studies since at least 1977. We have had promises made by the banking industries; we have had promises from regulators. But, after 8 years, conditions have improved for consumers only in those States that have enacted legislation.

It is our estimate, conservative estimate, that the cost to consumers of delayed funds policies exceeds $125 million a year, and that looks only at the cost of bounced check charges to consumers who bounce checks due to hold policies placed on deposits. The actual cost for other factors cited by us and by others in front of this subcommittee is certainly much higher.

We believe it is long past time for Congress to conclude that neither the regulators nor the industry has any interest or ability to act with proper speed to end excessive check hold periods. This is the proper forum to do something about this problem.

We found in our research that check hold periods simply are not related to any need to detect fraud or to guard against bad check losses. It is based on some of the testimony that has been presented by other witnesses before this subcommittee. It is based on our private discussions with investigators and prosecutors who are engaged in trying to detect white collar crime and check fraud. And we would urge Members of the subcommittee to hold such discussions with such people in their States.

Congress has heard much from the banking industry about the need for long check hold periods to detect and stop fraud. From examination of the check processing system, it reveals the hold periods in effect bear no relationship to banks' processes for stopping fraud. The fact that some banks are able to hold no checks or hold very few supports this conclusion.

The system for moving checks from the bank of deposit to the bank of origin is extremely efficient. It has been described repeatedly here today and yesterday. With use of high-speed sorting equipment and a hub and spoke transportation system that is similar to what is used by the package express companies, most checks make the journey from the payee bank to the payor bank in less than 2 days, and substantially all do so in 3 days.

I have here a copy of the Baltimore branch Federal Reserve Bank of Richmond's availability schedule. That lists the time that it takes to get a check from Baltimore to any other point in the 48 contiguous States of the country. There is not a period there over 2 days, and most of the periods are 1 day. That includes access to rural areas and small towns that are not in the major cities.

Most fascinating to me is that the last three pages——

Mr. ANNUNZIO. Mr. Fox, I want to ask unanimous consent that you put that clearing schedule in the record.

Mr. FOX. Be happy to.

[The schedule follows:]

BALTIMORE BRANCH
FEDERAL RESERVE BANK OF RICHMOND
P. O. BOX 1378
BALTIMORE, MARYLAND 21203

February 25, 1985

TO ALL DIRECT AND CONSOLIDATED SEND BANKS:

Enclosed is an updated availability schedule for the Baltimore Branch ITS delivery. The deadline for consolidated deposits will remain at 10:15 p.m. and 1:00 a.m. in Baltimore.

Our weekend availability schedule is also enclosed. All Federal Reserve city and RCPC endpoints will be available on Monday. All country endpoints will be available on Tuesday. We will accept unsorted Federal deposits up to 1:00 p.m. on Saturday. The consolidated deadline will remain at 3:00 p.m.

Should you have any questions concerning these schedules or availabilities, please contact either Margo Henderson (301) 576-3585 or Ron Holton (301) 576-3577 at the Baltimore Branch.

Sincerely,

John S. Frain, Manager
Payment Services Department

Enclosures (2)

FEDERAL RESERVE BANK OF RICHMOND
BALTIMORE BRANCH
Check Operations
Consolidated Shipment Schedule
For Closeout Hours and Availability of Credits
Effective February 28, 1983
Revised February 25, 1985

EXPLANATION:
10:15 P.M. - 1 Day Availability - 1 Day From Date of Cash Letter
1:00 A.M. - 1 Day Availability - Same Day as Shipment Date or 1 Day From Cash Letter Date
P - Represents Premium

MONDAY THROUGH THURSDAY									
OFFICE	CITY			RCPC			COUNTRY		
	Routing Sym.	Deposit Time		Routing Sym.	Deposit Time		Routing Sym.	Deposit Time	
		10:15	1:00		10:15	1:00		10:15	1:00
Boston	0110, 2110	1	1 P	0113, 0114 0115, 2113 2114, 2115	1 P	2			
Boston N.W. New England				0116, 0117 2116, 2117	2	2			
Lewiston				0112, 2112	2	2			
Windsor Locks				0111, 0118 0119, 0211 2111, 2118 2119, 2211	1 P	2			
New York	0210, 0260 0280, 2210 2260, 2280	1	1 P				0211, 0215 0216, 2211 2215, 2216	2	2
Buffalo	0220, 2220	1	1 P	0223, 2223	1 P	2			
Cranford				0212, 0270 2212, 2270	1 P	2			
Utica				0213, 2213	1 P	2			
Jericho				0214, 0219 2214, 2219	1 P	2			
Philadelphia	0310, 0360 2310, 2360	1	1 P	0319, 0311 0312, 0313 2311, 2312 2313, 2319	1 P	2			
Cleveland	0410, 2410	1	1	0412, 2412	2	2			
Cincinnati	0420, 2420	1	1	0421, 0422 0423, 2421 2422, 2423	2	2			

MONDAY THROUGH THURSDAY									
OFFICE	CITY			RCPC			COUNTRY		
	Routing Sym.	Deposit Time		Routing Sym.	Deposit Time		Routing Sym.	Deposit Time	
		10:15	1:00		10:15	1:00		10:15	1:00
Pittsburgh	0430, 2430	1	1 P	0432, 0433 0434, 2432 2433, 2434	1 P	2			
Columbus	0440, 2440	1	1	0441, 0442 2441, 2442	2	2			
Richmond	0510, 2510	1	1	0514, 2514	1 P	2			
Charlotte	0530, 2530	1	1	0531, 2531	1 P	2			
Columbia	0539, 2539	1	1	0532, 2532	2	2			
Charleston	0519, 2519	1	2	0515, 2512	1 P	2			
Atlanta	0610, 2610	1	1	0611, 0612 0613, 2611 2612, 2613	2	2			
Birmingham	0620, 2620	1	1	0621, 0622 2621, 2622	2	2			
Jacksonville	0630, 2630	1	1	0631, 0632 2631, 2632	2	2			
Nashville	0640, 2640	1	1	0641, 0642 2641, 2642	2	2			
New Orleans	0650, 2650	1	1	0651, 0652 0653, 0654 0655, 2651 2652, 2653 2654, 2655	2	2			
Miami	0660, 2660	1 P	1 P	0670, 2670	2	2			
Chicago	0710, 2710	1	1	0711, 0712 0719, 2711 2712, 2719	2	2			
Detroit	0720, 2720	1	1	0724, 2724	2	2			
Des Moines	0730, 2730	1	1	0739, 2739	2	2			
Indianapolis	0740, 2740	1	1	0749, 2749	2	2			
Milwaukee	0750, 2750	1	1	0759, 2759	2	2			

MONDAY THROUGH THURSDAY									
OFFICE	CITY			RCPC			COUNTRY		
	Routing Sym.	Deposit Time		Routing Sym.	Deposit Time		Routing Sym.	Deposit Time	
		10:15	1:00		10:15	1:00		10:15	1:00
St. Louis	0810, 2810	1	1	0819, 2819	2	2	0812, 0815 0865, 2812 2815, 2865	2	2
Little Rock	0820, 2820	1	2	0829, 2829	2	2			
Louisville	0830, 2830	1	1	0813, 0839 0863, 2813 2839, 2863	2	2			
Memphis	0840, 2840	1	1	0841, 0842 0843, 2841 2842, 2843	2	2			
Minneapolis	0910, 0960 2910, 2960	1	1	0918, 0919 2918, 2919	2	2	0911, 0912 0913, 0914 0915, 2911 2912, 2913 2914, 2915	2	2
Helena	0920, 2920	1	2	0929, 2929	2	2	0921, 2921	2	2
Kansas City	1010, 3010	1	1				1011, 1012 1019, 3011 3012, 3019	2	2
Denver	1020, 3020	1	1	1070, 3070	2	2	1021, 1022 1023, 3021 3022, 3023	2	2
Oklahoma City	1030, 3030	1	2	1039, 3039	2	2	1031, 3031 1112, 3112	2	2
Omaha	1040, 3040	1	1	1049, 3049	2	2	1041, 3041	2	2
Dallas	1110, 3110	1	2	1119, 3119	2	2	1111, 1113 3111, 3113	2	2
El Paso	1120, 3120	1	2	1122, 1123 1163, 3122 3123, 3163					
Houston	1130, 3130	1	2	1131, 3131	2	2			
San Antonio	1140, 3140	1	2	1141, 1149 3141, 3149	2	2			

MONDAY THROUGH THURSDAY

OFFICE	CITY			RCPC			COUNTRY		
	Routing Sym.	Deposit Time		Routing Sym.	Deposit Time		Routing Sym.	Deposit Time	
		10:15	1:00		10:15	1:00		10:15	1:00
San Francisco	1210, 3210	1	2	1211, 1212 1213, 3211 3212, 3213	2	2	1214, 3214	2	2
Los Angeles	1220, 1223 3220, 3223	1	2	1221, 1222 1224, 3221 3222, 3224	2	2			
Portland	1230, 3230	1	2	1231, 1232 1233, 3231 3232, 3233	2	2			
Salt Lake City	1240, 3240	1	1	1241, 1242 1243, 3241 3242, 3243	2	2			
Seattle	1250, 3250	1	2	1251, 1252 3251, 3252	2	2			

NOTE:

1. Cash letters should be prepared according to category of work.
2. City and regional reject cash letters are deferred one day. Country reject cash letters are deferred two days.
3. When a holiday occurs on the first day after receipt by this Bank, availability will be based upon the holiday schedule of the receiving Reserve Office.
4. The terms and provisions of Operating Circulars 7, 8 and 10 apply to this schedule.

FEDERAL RESERVE BANK OF RICHMOND
BALTIMORE BRANCH
Check Operations
Consolidated Shipment Schedule
For Closeout Hours and Availability of Credits
Effective February 28, 1983
Revised February 25, 1985

SATURDAY						
OFFICE	CITY		RCPC		COUNTRY	
	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times
		3:00 PM		3:00 PM		3:00 PM
Boston	0110, 2110	1	0113, 0114, 0115 2113, 2114, 2115	1		
Boston N.W. New England			0116, 0117 2116, 2117	1		
Lewiston			0112, 2112	1		
Windsor Locks			0111, 0118, 0119 0211, 2111, 2118 2119, 2211	1		
New York	0210, 0260, 0280 2210, 2260, 2280	1			0211, 0215, 0216 2211, 2215, 2216	2
Buffalo	0220, 2220	1	0223, 2223	1		
Cranford			0212, 2212, 0270 2270	1		
Jericho			0214, 0219, 2214 2219	1		
Utica			0213, 2213	1		
Philadelphia	0310, 0360, 2310 2360	1	0319, 2319, 0311 0312, 0313, 2311 2312, 2313	1		
Cleveland	0410, 2410	1	0412, 2412	1		
Cincinnati	0420, 2420	1	0421, 0422, 0423 2421, 2422, 2423	1		
Columbus	0440, 2440	1	0441, 0442, 2441 2442	1		
Pittsburgh	0430, 2430	1	0432, 0433, 0434 2432, 2433, 2434	1		
Richmond	0510, 2510	1	0514, 2514	1		

SATURDAY						
OFFICE	CITY		RCPC		COUNTRY	
	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times
		3:00 PM		3:00 PM		3:00 PM
Minneapolis	0910, 0960, 2910 2960	1	0918, 0919, 2918 2918	1	0911, 0912, 0913 0914, 0915, 2911 2912, 2913, 2914 2915	2
Helena	0920, 2920	1	0929, 2929	1	0921, 2921	2
Kansas City	1010, 3010	1			1011, 1012, 1019 3011, 3012, 3019	2
Denver	1020, 3020	1	1070, 3070	1	1021, 1022, 1023 3021, 3022, 3023	2
Oklahona City	1030, 3030	1	1039, 3039	1	1031, 3031 1112, 3112	2
Omaha	1040, 3040	1	1049, 3049	1	1041, 3041	2
Dallas	1110, 3110	1	1119, 3119	1	1111, 1113, 3111 3113	2
El Paso	1120, 3120	1	1122, 1123, 1163 3122, 3123, 3163	1		2
Houston	1130, 3130	1	1131, 3131	1		
San Antonio	1140, 3140	1	1141, 1149, 3141 3149	1		
San Francisco	1210, 3210	1	1211, 1212, 1213 3211, 3212, 3213	1	1214, 3214	2
Los Angeles	1220, 1223, 3220 3223	1	1221, 1222, 1224 3221, 3222, 3224	1		
Portland	1230, 3230	1	1231, 1232, 1233 3231, 3232, 3233	1		
Salt Lake City	1240, 3240	1	1241, 1242, 1243 3241, 3242, 3243	1		
Seattle	1250, 3250	1	1251, 1252, 3251 3252	1		

NOTE:

1. Cash letters should be prepared according to category of work.
2. City and Regional reject cash letters are deferred one (1) day. Country reject cash letters are deferred two (2) days.
3. When a holiday occurs on the first day after receipt by this Bank, availability will be based upon the holiday schedule of the receiving Reserve Office.
4. The terms and provisions of Operating Circulars 7, 8 and 10 apply to this schedule.

SATURDAY						
OFFICE	CITY		RCPC		COUNTRY	
	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times	Routing Symbols	Deposit Times
		3:00 PM		3:00 PM		3:00 PM
Charlotte	0530, 2530	1	0531, 2531	1		
Columbia	0539, 2539	1	0532, 2532	1		
Charleston	0519, 2519	1	0515, 2515	1		
Atlanta	0610, 2610	1	0611, 0612, 0613 2611, 2612, 2613	1		
Birmingham	0620, 2620	1	0621, 0622, 2621 2622	1		
Jacksonville	0630, 2630	1	0631, 0632, 2631 2632	1		
Miami	0660, 2660	1	0670, 2670	1		
Nashville	0640, 2640	1	0641, 0642, 2641 2642	1		
New Orleans	0650, 2650	1	0651, 0652, 0653 0654, 0655, 2651 2652, 2653, 2654 2655	1		
Chicago	0710, 2710	1	0712, 0719, 2712 2719, 0711, 2711	1		
Detroit	0720, 2720	1	0724, 2724	1		
Des Moines	0730, 2730	1	0739, 2739	1		
Indianapolis	0740, 2740	1	0749, 2749	1		
Milwaukee	0750, 2750	1	0759, 2759	1		
St. Louis	0810, 2810	1	0819, 2819	1	0812, 0815, 0865 2812, 2815, 2865	2
Little Rock	0820, 2820	1	0829, 2829	1		
Louisville	0830, 2830	1	0813, 0839, 0863 2813, 2839, 2863	1		
Memphis	0840, 2840	1	0841, 0842, 0843 2841, 2842, 2843	1		

Mr. ANNUNZIO. Thank you very much.

Mr. FOX. The last three pages describe the availability schedule for checks received by the Federal Reserve Bank on Saturdays. Most of the hold periods that consumers are subject to are described in terms of business days, but the processing system works on Saturdays, as well. That is something to the advantage of banks that does not accrue to consumers.

Every participant in the system has every incentive to speed that part of the system to its utmost, because they receive credit based on the time it takes to move the check all the way through to the payor bank. In addition, the UCC requires the payor bank to determine very quickly whether a check is good or not.

So, in short, the bank on which the check is drawn must determine the check is good in 1 to 4 days after the check is deposited. If the check is bad and the payor and payee banks are far apart, on the other hand, the current system does not reward speed in returning the check.

The industry and the regulators have argued that improvement in the return system will correct this. The fact is, the return process is so slow, the check hold periods that banks use bear no relationship to the time needed to notify the payee bank that a check is bad.

There is evidence that is cited in Ms. Livingston's written testimony, a study based on a 3-week survey of returned items by a New York savings institution, summarized by the U.S. League of Savings Institutions. I would like to quote from that:

"While the association uses the equivalent of a 7-day hold for items drawn on institutions in metropolitan New York * * *"—and seven days is an unusually long hold period for local checks—"* * * only 1 percent of the checks returned by local institutions were received within the 7-day hold period. About 90 percent took at least 10 days to be returned."

Mr. Martin, in response to a question by Congressman Schumer, said that 15 percent take longer than the hold period. According to his written testimony, 15 percent take 10 or more days; far more than 15 percent exceed the hold period.

Fraud can be detected in either of two points of the system—at the bank in which the check is deposited; and it may be detected at the bank on which the check is written. Now, in the first case, the fraud will be spotted immediately and the long hold periods are unnecessary to protect any element of the financial system. In the second case, on the other hand, the fraud will be spotted in one to 4 days; but under the current return system, the check will not be returned to the bank of deposit until well after the hold period has expired. So, the hold periods are too long to be necessary when fraud is spotted at the bank of deposit, but too short to protect the bank when they are spotted at the bank on which the check is drawn.

The reason for that is that banks are in no hurry to return bad checks because the bank is only at risk from check fraud when a check kiter creates an artificial balance and attempts to withdraw cash from the bank itself. This sort of scheme can be easily spotted by banks; and schemes like this are usually prevented by technology available today. The banks are able to protect themselves and their money under currently available technology.

Most banks have policies that deny consumers access to their deposits, but some make access available immediately on most checks. We believe this indicates that the banks have determined that long hold periods are not necessary to stop fraud or not necessary to guarantee that bad checks will be detected. The banks are able to use currently available technology and other practices to hold down costs due to fraud and focus their attention on those few accounts which frequently do cause problems, exceptions which are provided for in this legislation and which all the groups appearing here support.

Thank you.

[The prepared statement of Mr. Fox on behalf of Consumer Federation of America follows:]

STATEMENT ON

H.R. 2443: THE EXPEDITED FUNDS AVAILABILITY ACT

BY

ALAN FOX
LEGISLATIVE REPRESENTATIVE
CONSUMER FEDERATION OF AMERICA

BEFORE THE FINANCIAL INSTITUTIONS SUBCOMMITTEE
HOUSE COMMITTEE ON BANKING
HON. FERNAND J. ST GERMAIN, CHAIRMAN

October 10, 1985

Consumer Federation of America, representing over 200 national, state and local consumer, senior citizen, cooperative, and rural organizations, with a combined membership of 30 million people, strongly supports HR 2443, the Expedited Funds Availability Act. We will submit material which we believe justifies legislation to set shorter availability periods than those allowed by HR 2443.

The delayed funds availability issue is not new to consumers, nor to Congress. According to the record of a Senate hearing held two years ago, members of Congress have been urging the Federal Reserve to take action since at least 1977. The issue has been debated and studied. Promises have been made by the banking industry and by regulators. But after at least eight years, conditions have improved for consumers only in those states which have enacted legislation. In the meantime, we estimate that the cost to consumers of delayed funds exceeds $125 million a year, while the cost to banks of losses on bad checks is less than one tenth of that amount. It is long past time for Congress to conclude that neither the regulators nor the industry has any interest in acting with proper speed to end excessive check hold periods.

LONG CHECK HOLD PERIODS ARE COMMON

Every independent study of bank check holds indicates that most banks hold most checks for many days before funds are made available to depositors:

Held Up at the Bank: A Study of Check Hold Policies Across the Nation (United States Public Interest Research Group, April 1985) contains the results of a survey of 669 banks and savings and loans in ten states. The survey found that over 70% of those institutions hold checks drawn on local banks for three or more days, including 18% which hold local checks for six or more days. Despite claims by the industry that many banks no longer hold local checks, the survey found that banks which hold local checks for six to fifteen days are as numerous as banks which do not hold.

The survey also found that over 75% of the surveyed institutions hold out-of-state checks for six or more days. 20% have hold periods on such checks of more than two weeks; some even hold checks for more than three weeks.

The U.S. PIRG study is the most comprehensive study available. There are several other reports on the record which focus on particular markets:

Consumer Action, a California consumer organization, reported in April 1985 that check hold policies in San Francisco had been reduced somewhat to comply with a new state law. CA found, however, that many institutions "may still be utilizing longer hold periods than necessary to protect themselves." Over half the institutions surveyed hold local checks for three or more days. Thirty-five of the 45 institutions surveyed hold out-of-state checks for eight or more days. A few institutions have eliminated hold periods entirely, but the vast majority have hold periods as long as any in the nation.

A survey by the Consumer Council of Maryland, Survey of Banking Issues, dated December 27, 1983, found that every one of the nine banks and savings and loans surveyed held out-of-state checks for five to twelve days. Every bank reported clearing some checks, apparently payroll checks, in one day, but delays of three to ten days on in-state checks were reported at every bank for some such checks. Four of the institutions would flatly refuse to allow a customer to draw on uncollected funds, while the others at least gave branch managers some discretion to make exceptions. While the three savings and loans and one bank began paying interest on the day of deposit, five of the six banks surveyed would only pay interest from the day of collection or clearing.

Florida Public Interest Group's Bank Hold Up Report, released in October 1983, found that every one of the twenty savings and loans surveyed in Broward and Palm Beach counties held local checks for five or more days, and the majority held local checks for seven or more days. The sixteen banks in those counties were little better, with twelve holding local checks for four days or more. Twenty-three of twenty-five banks in Dade County hold local checks for four days or more. Every institution surveyed in Leon County held local checks for three or more days. In each of these areas, holds on in-state, nonlocal checks were typically eight to ten days, and frequently longer, and out-of-state checks could be held as long as 23 business days. Under such an availability schedule, a check deposited on September 10 would not yet be available today, on October 10.

A survey of Washington, D.C. area banks by Public Citizen found that few place holds on payroll checks. But other local checks are another story. According to Washington Post columnist Bob Levey, a researcher found that "of 16 DC banks sampled, 10 apply a hold of at least 2 business days, and sometimes as many as 5 (days). 19 of 26 Maryland banks do the same, as do 8 of 19 Virginia banks."

THE COST TO CONSUMERS OF LONG CHECK HOLDS

Much has been made of the costs to banks of bad checks. But consumers, particularly low- and moderate-income consumers with small accounts, lose far more from bank check hold policies than banks do from bad checks.

We estimate that check holds cost consumers over $125 million a year in bounced check charges alone. This figure is based on data from the Bank Administration Institute and the Federal Reserve, provided to this subcommittee by Federal Reserve Board Vice Chairman Preston Martin, and contained on page 213 of the record for the April 4, 1984 hearing on HR 5301.

According to that document, there were 360 million checks returned in 1981. The table states that 2.7% of those checks were returned because of "Uncollected Funds;" that is, an amount sufficient to cover the returned check had been deposited in the account but the bank placed a hold on the deposit.

These figures mean that 9.7 million checks are returned because of check holds each year. A Consumer Federation of America study in 1985 found that the average fee charged to consumers for bounced checks is about $13. The 9.7 million bounced checks due to check holds thus cost consumers about $125 million in those fees alone.

It is impossible to estimate the additional costs to consumers because of check holds. We do not know how much interest is lost from interest-bearing accounts, nor how much consumers lose to late fees assessed by utilities and other creditors because checks they write in good faith bounce when banks place holds on their deposits.

The burden of these costs is certainly borne disproportionately by low- and moderate-income families and by working families living from paycheck to paycheck. These consumers have no margin for error in their accounts. They are not cushioned by overdraft protection or large regular balances. A deposited check will frequently represent substantially all of the current balance in an account. If they miscalculate a hold period by a day or two, these consumers could, and often do, find checks they write for their necessities -- rent or mortgage, utilities, groceries -- bouncing and their costs mounting.

In contrast, banks have not presented evidence that they bear any significant losses because of bad checks. In a thorough review of the records of hearings held by this subcommittee in 1984, and by a Senate subcommittee in 1983, the highest estimate we were able to find for bank losses due to bad checks was $5 million in 1973. Even allowing for increased costs since 1973, it is likely that banks charge consumers over ten times as much as a result of excessive holds as they lose due to bad checks.

CHECK HOLD PERIODS ARE NOT RELATED TO THE NEED TO DETECT FRAUD

Congress has heard much from the banking industry about the need for long check hold periods to detect and stop fraud. But an examination of the check processing system reveals that the hold periods in effect bear no relationship to bank's processes for stopping fraud. The fact that some banks hold no checks or very few checks supports this conclusion.

The system for moving checks from the bank of deposit to the bank of origin is extremely efficient. With the use of high-speed sorting equipment and hub-and-spoke transportation systems similar to those used by package express companies, most checks make the journey from the payee bank to the payor in less than two days, and substantially all do so in three days. Every participant in the system has every incentive to speed up this system to the utmost, because they receive credit based on the time it generally takes to move a check all the way through. In addition, the Uniform Commercial Code requires the payor bank to determine whether a check is good almost immediately after it receives the check.

In short, the bank on which a check is drawn must determine if the check is good, in all but a handful of situations, in one to four days after the check is deposited. If a check is bad, and the payor and payee bank are far apart, the current system does not reward speed in returning the check. The banking industry has argued that only improvements in the return system will allow reductions in hold periods. But the return process is so slow that check hold periods bear no relationship to the time needed to notify the payee bank that a check is bad.

Fraud may be detected at either of two points in the processing system. It may be detected at the bank in which the check is deposited or it may be detected at the bank on which the check is written.

In the first instance, the fraud will be spotted immediately, and long hold periods are unnecessary. In the second case, the fraud will be spotted in one to four days, but under the current return system the check will not be returned to the bank of deposit until after the hold period has expired. Hold periods are too long to be necessary when fraud is spotted at the bank of deposit, and too short to protect the bank when spotted at the bank on which the check is drawn. An executive of AmeriFirst Federal Savings in Miami is quoted in the January 15, 1984 Miami Herald as stating that only 40% of the checks returned to AmeriFirst by South Florida banks come back within AmeriFirst's seven day hold period on local checks.

Banks are in no hurry to return bad checks because a bank is only at risk from check fraud when a kiter creates an artificial balance and then attempts to withdraw cash from the bank itself. These schemes can be easily spotted by banks, and they can be and usually are prevented by technology available today. Banks are quite able to protect their own money.

When a bad check is written to a merchant, however, it is the merchant who bears the cost of that check. Long hold periods do not protect that merchant, since he, unlike the bank, cannot determine whether funds exist to back up a check. Banks are in no hurry to pass bad checks back through the processing system because they do not bear any losses from such checks. They do, however, benefit greatly from maintaining their access to consumer accounts while denying access to consumers.

While most banks have policies which deny consumers access to their deposits, some make access available immediately on most checks. Too few banks do so to allow a conclusion that the market has provided a solution to this issue. Nevertheless, these banks appear to have determined that long hold periods are not necessary to stop fraud or to guarantee that bad checks will be detected. They are able to use technology and common sense to hold down losses, and focus their attention on those few accounts and checks which frequently cause problems (such as new accounts) rather than penalizing the 99%-plus of

American consumers who do not cheat or steal from their banks.

LEGISLATIVE RECOMMENDATIONS

Long check hold periods are not needed to protect banks against fraud. The return system is so inefficient that it probably does not return most checks to the bank of deposit before most hold periods expire. Consequently, although improvements in the return process should be encouraged, reductions in check hold periods need not await improvements in the return process.

HR 2443 requires development of a system which permits one to three day availability after a period of up to five years during which improvements are to be made in the return system. We believe that one to three day hold periods are feasible today, and call on the subcommittee to amend the bill to that end. Exceptions for new accounts, large checks, and foreign checks should be included. We also urge amending HR 2443 to require immediate availability of government checks that are endorsed only to the person to whom the check is issued.

Mr. ANNUNZIO. Thank you, Mr. Fox.

Ms. Meier.

STATEMENT OF MICHELLE MEIER, COUNSEL FOR GOVERNMENT AFFAIRS, CONSUMERS UNION OF U.S., INC.

Ms. MEIER. Thank you, Mr. Chairman.

I am Michelle Meier from Consumers Union, the Washington office of Consumers Union, which publishes Consumer Reports magazine.

Like my colleagues, I wish to commend the committee for addressing this longstanding consumer problem. It is a problem that needs to be solved now.

As Ms. Livingston said at the beginning of this panel, I will be presenting the positions of all four of the organizations we represent here as to recommendations to improve 2443.

You may be surprised to hear that we are in agreement with one thing Mr. Martin said on this issue, and that is that we don't need to premise any mandated hold periods on improving the return system. As you are aware, H.R. 2443 sets up a scheme under which we have for 5 years rather long maximum hold periods of 3, 4 and 8 days after which there will be a hold period of 1 to 3 days maximum, with no exceptions, after the 5-year period.

The bill contemplates improvements in the return system, a possibility that at best is doubtful, given some of the testimony you have heard today, and the years of statements from both the industry and the regulators that improvements in the return system is such a difficult problem, such a costly problem. So we believe that to establish maximum holds of between 1 and 3 days now, which are hold periods based on the receipt of provisional credit for all checks deposited, is the best route to go now, with, of course, a proviso allowing institutions to invoke an exception clause in cases of high risk.

This avoids relying on improvements in the return system and, in fact, many institutions follow this policy now. We heard this yesterday from Wells Fargo. Bank of America has also said it holds only 0.3 percent of all the deposits into its branches, and only invokes exceptions in high-risk circumstances.

The Fed, in testimony in 1982, indicated that it believed that it was possible for financial institutions, upon receipt of a deposited check, to determine whether the check represented a high-risk situation. So even the Fed is acknowledging what the industry is also acknowledging—that this scheme is possible and workable.

We prefer this method because, frankly, we don't believe the industry has much incentive to improve the return system because the losses they incur now are minimal.

As Mr. Fox has described in talking about the means—for banks to determine whether fraud is involved in any particular deposit, how the current hold periods do not prevent fraudulent activities. There are ways that persons who want to defeat the system can interfere with the magnetic coding on a check and make the check come back once dishonored to the bank of deposit, way, way beyond any average hold period, even a long hold period.

There are a couple of items we will have to address if we go this route that we strongly suggest that is, requiring 1- to 3-day availability based on provisional credit, with exceptions, this scheme we suggest be imposed immediately. We will have to define a local check, and a local check should be defined to correlate with when an institution receives provisional credit. If provisional credit is received on a check within 1 day, that should be deemed to be a local check and 1-day availability maximum should be required.

We also believe that the exceptions for savings and loans, which is included in the bill right now, should be taken out of the bill, because, again, our scheme—a very simple scheme—is based on the receipt of provisional credit. If savings and loans receive that credit later than the banks do, then the 1- to 3-day provisional credit scheme can accommodate that.

The main focus should be receipt of provisional credit with exceptions for high-risk situations.

Ms. **Meier**. That, of course, is the major point the consumer groups today wanted to make, that waiting 5 years for the institutions to come back and say, we can't do it, is not good enough.

However, there are also a couple other provisions we would like to see improvements in. The civil liability provision in the bill exempts an institution from liability for violating the maximum hold periods in the bill if the violation is not intentional. That is a very big loophole. What is intentional? It could include ignorance or incompetence on the part of the bank employee. From our experience, the training of the tellers in banking institutions could make ignorance or incompetence a very common phenomenon and exempt the institution in many situations. Also, it is within the control of the institution to make sure its systems are operating, and the burden of violating the maximum holds period should not fall on the consumer, of course.

Finally, the class action section is very important. We believe it should stay in the bill to prevent pervasive practices in which the holds periods are violated.

The work of a class action is primarily the work of the plaintiff, who must certify the class and gather information regarding what persons constitute the class. Having had actual experience doing class actions, I believe this right to pursue a class action should not burden the institution, but in fact, the plaintiff—and is very important for detecting systematic schemes of violations.

We would suggest, since there are no minimal recovery provisions regarding class actions in the bill, that there be a provision to allow for recovery of attorneys' costs and attorneys' fees in the case of a class action.

Thank you very much. I hope the bill will move forward with our suggestions.

[The prepared statement of Ms. Meier on behalf of Consumers Union follows:]

TESTIMONY OF MICHELLE MEIER
COUNSEL FOR GOVERNMENT AFFAIRS

CONSUMERS UNION OF U.S., INC.
on H.R. 2443
THE EXPEDITED FUNDS AVAILABILITY ACT

before the SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
of the

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 10, 1985

Consumers Union[1] appreciates the opportunity to testify today on an issue that continues to present a significant problem for many consumers -- delayed funds availability. We believe H.R. 2443 is a step in the right direction, and we commend Chairman St Germain for introducing the bill and holding today's hearing. We urge, however, that the bill be modified to eliminate the temporary hold periods and to require institutions immediately to provide 1-3 day availability for deposited checks, with exceptions for high risk situations. With this modification, and a change in the civil liability provisions, the bill will go a long way toward eliminating abuses in this area.

THE PROBLEM

The problem addressed by H.R. 2443 is not new. For years depository institutions have placed extensive holds on funds deposited by check. These holds can run up to 13 days.[2]

The long hold periods are a source of irritation, inconvenience, and monetary loss for many consumers. Surveys conducted by the Federal Reserve Board in 1977, 1981 and 1983 revealed that 14%, 25% and 13%, respectively, of people with checking accounts have experienced problems with delayed funds. That means that between 6.5 million and 12 million Americans have had problems at some time. These figures do not even include, however, the harmful effect of long hold periods on many consumers who will not even show up on the surveys. Millions of people have adjusted to this pervasive practice by paying bills out of other, higher interest bearing accounts or waiting to make needed purchases until the hold period ends.

The hardship presented by the long hold periods hits low and moderate income consumers the hardest. Figures presented by the Federal Reserve Board show that 39% of all families have less than $1000 in financial assets.[3] Many of these people live from paycheck to paycheck and frequently need immediate access to at least a portion of whatever funds they receive.

Although it is one of the most frequent subjects of complaints lodged against the banking system,[4] little has been done to correct the obvious injustice of these long hold periods. On the contrary, all the consumer has gotten is studies, reports and pilot projects that merely accumulate redundant evidence that the consumer is being exploited by this practice.

THE CHECK CLEARING PROCESS

The check clearing process is complex in practice but simple in theory. A deposited check is quickly moved from the bank of deposit to the bank on which it is drawn through high speed processing equipment. Depending on the size and destination of the check, among other factors, it may be couriered overnight or forwarded through a check clearinghouse or Federal Reserve processing center to the paying institution. In any case, this forward process toward the payor bank is very efficient. Most checks are collected within 2 days after the day of deposit.

As the check moves to each successive institution during the forward process, credit is extended to the forwarding institution according to when the check is expected to be paid. For example, if the bank of deposit moves the check to a Federal Reserve processing center, the center will give the bank credit in the amount of the deposited check as of the date the center expects to collect on the item. In 65-70% of all cases, the credit becomes available within 1 day after the check is received by the Federal Reserve. Credit is given for all checks within 2 days of receipt.

The credit extended during the forward process is provisional. It may be revoked if the check is dishonored by the bank on which it is drawn. In that case, the check is returned through the same chain of banks and processing centers involved in its forward movement, except in reverse order.

This return process is exceedingly slow. The bank on which the check is drawn may delay until midnight of the day following the date the check is received to start the return process, and, even then, it may put the returned check in the regular U.S. mail. Each other institution involved in the return of the check may do the same.

In most cases, the bank of deposit does not learn whether a check has been dishonored until enough time has passed to allow for the check to reach the payor institution and make its long way back. However, even after waiting 15 days, for example, for a check to return, the bank of deposit cannot be sure the check has been honored because the current system imposes an obligation to notify only in the case of dishonor. A mishap in the forwarding or return process can extremely delay receipt of that notice by the bank of deposit.

IT IS NOT NECESSARY TO IMPROVE THE RETURN SYSTEM BEFORE REDUCING THE LONG HOLD PERIODS

Part of the industry argues that the long hold periods are necessary because of the present check clearing system. A bank should not release deposited funds, this argument goes, until enough time has passed for it to be confident that the check has been honored by the bank on which it is drawn. Because the check clearing system is very slow in notifying a depository bank that a check has been dishonored, proponents of this view argue that legislated reductions in funds availability schedules should not occur until the check clearing system has been improved.

Other banks, of course, indicate that there is no need to improve the check clearing system before eliminating or strictly reducing the long hold periods. Bank of America, for example, has stated that it placed holds on only .3% of deposited funds in 1981. It imposes holds only on a case-by-case basis depending on the risk of loss presented by a particular check. This second category of banks, those that already have reduced or eliminated hold periods for most of their deposited checks, demonstrates that it is possible to develop reasonable holds periods without an improved return system by distinguishing between financially responsible and other customers. Even the ABA-Federal Reserve Task Force that studied delayed funds availability in the late seventies issued a report that suggests the workability of this scheme. It stated that banks should "retain the flexibility to provide established, financially responsible customers with funds availability on a schedule at least equal to the receipt of 'provisional credit' by the bank without extending similar funds availability in situations that may involve crime or financially irresponsible individuals."[5]

We urge that H.R. 2443 incorporate this approach to solving the problems consumers experience with delayed funds availability. The bill should require all banks to make funds available on a schedule that generally reflects the period required for the bank to receive provisional credit for the category of check deposited, i.e., within 0-3 days after deposit. Any bank should only be allowed to extend that time period to allow for return item processing when a particular deposit presents an identifiable risk of loss.

As it is presently written, H.R. 2443 defers the implementation of a reasonable hold schedule for five years for the apparent purpose of giving the Federal Reserve Board time to improve the check clearing process. However, until a new process is developed that is generally recognized to be workable and cost-effective, there is no need to delay a hold schedule based on receipt of provisional credit. This is because the present use of long hold policies does little toward protecting a bank against loss that could not be achieved by allowing the bank to impose such holds only in high risk circumstances.

The long hold periods are based on averages, i.e., the average time it takes for any category of check to be presented to the paying bank and returned to the bank of deposit. However, average time periods do not protect a bank when a customer intentionally writes or deposits a bad check. Someone who wishes to defraud a bank by receiving cash for a check written on insufficient funds can do so now by tampering with the check's magnetic strip, which is used to make the check machine-readable for sorting purposes during the forwarding process. This delays the check in its forward movement toward the paying institution, requiring the processing banks to handle the check by hand.

The present clearing process based on long hold periods also leaves a bank vulnerable to losses on checks written with forged signatures. Because of the large volume of checks, a payor bank does not usually have the time or resources to determine whether signatures are forged. At most, the paying bank is able only to check to make sure that endorsements and signatures are actually present.

In short, the present hold periods used by many banks are not justified as a means to eliminate or reduce losses caused by criminal attempts to defraud. These sources of loss occur in spite of the long holds policies already used by banks, and therefore, they should not increase as a result of a maximum schedule based on provisional credit.

If the industry and its regulators wish to improve the check clearing system, which is questionable in itself, it is probably not because they wish to accommodate shortened hold periods. Rather, it may be because they wish to eliminate all losses due to dishonored and fraudulent checks, particularly those losses that are not avoided by long hold periods.

However, to improve the return system will probably not be worth the costs involved because so few checks are ever returned. The ABA-Federal Reserve Task Force found that only 0.67% of all checks processed are returned and only a portion of these checks are not honored upon second presentment. The industry apparently does not believe the loss it incurs now from this small number of return items justifies the cost of improving the return process. The lure of quick access to provisional credit motivated the industry to develop amazingly efficient computerized systems to speed a deposited check forward to the paying instutution. If the losses incurred because of the time-consuming return process were great enough, the industry could long ago have developed improvements in the system. Obviously, it has decided that a speedy return item notification procedure is not worth the relatively insignificant losses involved.

In sum, it is not necessary to premise 0-3 day maximum hold period legislation on improvements in the check clearing system, or to delay the effective date of the legislation for five years to allow the improvements to be made. The long hold policies do little to protect against intentional efforts to defraud. This approach only delays the time when the industry will press the argument that the return system cannot be improved at reasonable cost. Thus, in five years we will be back at square one, where we are today.

THE CIVIL LIABILITY PROVISIONS

Section 13(c) of the bill absolves a bank from liability for violations if the violations are not intentional. This is a major loophole because it could exempt a bank from liability if the violation resulted from the ignorance or incompetence of its employees, which, from our experience, seems to be a major characteristic of the banking industry. Consumers should not have to bear the burden of the industry's incompetence. Rather, the possibility of exposure to liablity regardless of the good intentions of the bank should serve as an incentive to efficiency.

1/ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications, and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 3.5 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory action which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

2/ Consumer Reports, November 1984, p. 649.

3/ FRB, Survey of Consumer Finances (1983) Table 9.

4/ In an earlier congressional hearing on this subject, Senator Chafee noted that "Federal Reserve Governor J. Charles Partee recently stated that in working with various consumer groups and State attorneys general, delayed funds is an issue that 'comes right to the top as an area that is most complained about.' Federal Reserve Governor Nancy Teeters has stated that next to monetary policy, she is asked most about check holds." Hearings on Delayed Funds Availability before the Subcommittee on Consumer Affairs of the Committee on Banking, Housing, and Urban Affairs, 97th Cong. 2d Sess. 1 (March 10, 1982).

5/ Final Report and Recommendations of the Funds Availability Task Force (1979) pp. 9-10.

Mr. ANNUNZIO. Thank you.
Mr. Caudell.

STATEMENT OF MICHAEL CAUDELL-FEAGAN, STAFF ATTORNEY, U.S. PUBLIC INTEREST RESEARCH GROUP

Mr. CAUDELL-FEAGAN. I am Michael Caudell-Feagan, staff attorney with the U.S. Public Interest Research Group.

U.S. PIRG serves as the Washington, DC, legislative research and advocacy office for State public interest research groups across the country.

Although U.S. PIRG is a relatively new organization in Washington, State PIRG's have long been in the forefront of addressing the problem of excessive check holds in their States.

In a recent example earlier this year, Rhode Island PIRG documented the extent of the problem in Rhode Island and joined with Senator Gannon, who testified yesterday, in a campaign to provide relief to that State's consumers.

U.S. PIRG is pleased to be able to join with you, Mr. Chairman, and all the members of the subcommittee who are attempting to address this problem through national legislation. As my colleagues have so aptly demonstrated, check holds are a widespread and unjustified problem.

U.S. PIRG conducted a comprehensive nationwide survey of 669 banks and thrifts earlier this year. The results of that survey were disturbing but not surprising. A majority of the financial institutions surveyed said that checks drawn on a local bank would be held 3 to 5 business days.

Seventy-five percent announced that they hold out-of-State checks for 6 business days or over, while 20 percent responded that these checks will be held over 2 weeks. Check hold periods of as long as 20 business days—nearly a month—were identified, and even cashier's checks were not exempt.

Consumers subjected to these holds bear the hardship of delayed access, bounced check charges, and, for those individuals living on limited incomes, the possibility of exclusion from the banking market.

These problems have long been recognized. The Federal Reserve Board and the banking industry have been studying the problem since the 1970's. Yet, despite continued public outrage and congressional prodding, no relief is in sight.

The Bank Administration Institute revealed its own frustration in its 1983 Survey of the Check Clearing System. They noted that the exhaustive studies, recommendations, and pilots undertaken by industry groups and the Fed have only served to repeatedly identify the problem and possible solutions without implementing any changes.

The trade association representatives testifying yesterday want to start the cycle all over again. We were told of a major new pilot program scheduled for November, and a "Voluntary Action Kit" being distributed.

We were told to rely on industry action and disclosure. Yet, Mr. Tomson of the Independent Bankers complained about printing and postal costs, and Mr. Glass of the American Bankers' Association told us we couldn't rely on tellers.

Where are consumers supposed to turn for disclosure then? Consumer groups have enough problems collecting and deciphering information from financial institutions, let alone individual consumers.

We were repeatedly told that legislation was too rigid a remedy. Yet, it is the banks' rigid response to this problem that prompts our call for legislation. For flexibility, H.R. 2443 provides a list of exceptions for high-risk situations such as new accounts, high dollar checks, and accounts with frequent overdrafts.

We were warned by the Independent Bankers that the costs of any legislation will be borne by consumers. But who bears the costs now?

We estimate that consumers pay over $125 million a year in overdraft charges for checks written on held funds, let alone the incidental costs consumers experience from creditor charges and lost opportunities. It appears to us that consumers are bearing exorbitant costs now.

We were told that mandated ceilings would result in increased losses and that without the deterrent of long hold policies, we would be conducting a "dangerous experiment." Yet, how are the banks that have discarded lengthy hold periods surviving?

Eighteen percent of the banks in the U.S. PIRG survey grant immediate access to local checks, and 10 percent hold out-of-State checks for only 2 days.

The industry's responses seem designed to maintain a system, which they do not have any incentive to change. U.S. PIRG, therefore, joins with the consumer groups represented today in urging swift action on a strengthened H.R. 2443.

We strongly support the amendments presented by Ms. Meier and also would like to raise one more concern of our organizations.

Section 6 of H.R. 2443 provides that States are free to adopt check hold laws that mandate shorter time periods than Federal law for checks deposited in institutions chartered by that State.

Mr. ANNUNZIO. This is the second go-around. I must make this vote, it is a rule on the textile bill.

I will recess for 5 minutes. If Mr. Schumer walks in, he will take the Chair and we will resume.

[Recess.]

Mr. SCHUMER [presiding]. The committee will come to order.

Mr. Caudell-Feagan had not finished his remarks. Please proceed.

Mr. CAUDELL-FEAGAN. Thank you.

We would like to raise one more concern on section 6.

Representing a network of PIRG's active at the State level, we are all too aware of the detrimental effects a double standard for consumer protection laws based on a bank's charter can be.

We therefore oppose the provision removing nationally chartered institutions from potential State legislation on this issue.

In conclusion, I would like to commend you for taking the lead in fighting for an end to unfair check holds, and urge the subcommittee to continue to address the multitude of problems consumers experience in the banking area.

Thank you very much.

[The prepared statement of Mr. Caudell-Feagan on behalf of the U.S. Public Interest Research Group follows:]

TESTIMONY OF

MICHAEL CAUDELL-FEAGAN
STAFF ATTORNEY
U.S. PUBLIC INTEREST RESEARCH GROUP

CONCERNING H.R. 2443
THE EXPEDITED FUNDS AVAILABILITY ACT

BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION, AND INSURANCE

THURSDAY, OCTOBER 10, 1985

Mr. Chairman and Members of the Financial Institutions Subcommittee:

I am Michael Caudell-Feagan, staff attorney with the U.S. Public Interest Research Group (U.S. PIRG). U.S. PIRG serves as the Washington, D.C. legislative research and advocacy office for state Public Interest Research Groups across the country.

Although U.S. PIRG is a relatively new organization in Washington, state PIRGs have long been in the forefront in addressing the problem of delayed funds availability in their states. Responding to numerous complaints from their members, state PIRGs studied and surveyed bank hold policies and their justifications. As state-by-state studies documented the problem, PIRGs began campaigns in many state legislatures to provide relief to the citizens of their states.

U.S. PIRG is pleased to be able to join with you, Mr. Chairman, and all the members of the subcommittee who are attempting to address this problem through national legislation. The past has taught us that it is only through federal legislation that all consumers can expect relief. Preemption of state delayed funds availability laws have denied consumers the full protection state legislatures intended to provide and chilled efforts to reform bank practices elsewhere.

We strongly support both mandating strict ceilings on the amount of time banks can deny consumers access to their funds and requiring disclosure of bank hold policies. It is time that consumer grievances be addressed with action instead of additional studies, pilots, and recommendations. Although we will suggest revisions, we urge prompt action on H.R. 2443 so that consumers will be relieved of an unnecessary hardship.

A Widespread Problem

Consumers across the country are subjected to lengthy delays in gaining access to their funds. The extent of the problem is suggested by a nationwide survey of 669 banks and savings and loans compiled by U.S. PIRG this year.(1) A majority of the financial institutions surveyed said that checks drawn on a local bank would be held for three to five business days. 75 percent announced that they hold out-of-state checks for six business days or over, while 20 percent responded that these checks will be held over two weeks. Check hold periods of as long as 20 business days -- nearly a month -- were identified.

Even cashier's checks were not exempt. 32 percent of the banks and savings and loans said that out-of-state cashier's checks would be held over a week. 33 percent said that cashier's checks drawn on banks located in the same community would be held three business days or more.

Federal Reserve surveys reveal that 11 to 20 percent of deposit account holders in the nation had delayed availability problems.(2) While our data reveals the problem is much greater, these percentages yield a conservative estimate of between 6.5 to 12 million consumers who experienced problems when denied access to their funds. These numbers do not even include consumers who have adjusted their behavior over the years to avoid problems with these pervasive policies or those who are unable to maintain a checking account due to an inability to wait for lengthy holds to be released to get access to their funds.

The Cost to Consumers

The most obvious hardship for consumers confronted with these policies is the chronic delay in gaining access to funds. The purpose of depositing funds in a checking account is to have ready use of the money.

Ready access, however, is not available to the millions of consumers like Edie Baumal. Edie was knowledgeable enough about hold policies to ask her parents to send a money order when she needed to repair her car. Unfortunately she didn't realize that her Massachusetts bank would hold even a $100 Chemical Bank money order for seven days. The inconvenience of having to borrow money from a friend turned into anger when she discovered that her bank could collect and invest the funds from her check within one day of deposit. The inequity of this situation, however, is not all that a consumer has to contend with.

Financial institutions not only deny consumers access to their funds, but they also extract an average overdraft fee of thirteen dollars whenever a check is written on these so-called "uncollected funds." According to Federal Reserve statistics, 9.72 million checks were returned in 1981 due to holds placed on deposited funds.(3) With an average bounced check charge of $13,(4) aggregate consumer losses for bounced check charges alone are over $126 million a year. If the check is written to a business, the consumer may also have to pay creditor's bad check fees and late fees. Not only can this be extraordinarily costly, but it can also impair the consumer's credit rating.

For those consumers living on limited incomes check holds are more than just an inconvenience or periodic overdraft charges. Low- and moderate-income people with no cushion of funds to meet their living expenses simply can't afford to wait for the banks to release their holds on recently deposited checks when bills are due. Of the one out of five families without checking accounts,(5) many may be precluded from using these accounts by the lengthy check holds and resulting overdraft charges.

A History of Inaction

The gravity of the delayed funds availability problem has long been recognized. The Federal Reserve Board and the banking industry have been studying and surveying the problem since the 1970s. The Bank Administration Institute suggested improvements in the check clearing system in 1975 which are still being considered today.(6) The American National Standards Institute approved an endorsement standard in 1981 which could eliminate 45 percent of the returned checks that banks must write off.(7)

Yet despite continued public outrage and congressional prodding, neither voluntary industry efforts nor action by the federal regulators of financial institutions have provided consumers with relief. The Bank Administration Institute revealed its own frustration in the 1983 Survey of the Check Clearing System. Noting that the exhaustive studies, recommendations, and pilots undertaken by industry groups and the Federal Reserve have "met with the same fate," the institute acknowledged that vested interests and the lack of an appropriate incentive have impeded implementation of currently existing solutions.(8)

The Check Clearing Process

The banking industry continues to point to the antiquated return process as an excuse for bank practices. It is a convenient excuse at best. The check clearing process provides banks with rapid access to a consumer's funds and a built-in excuse for holding them even after the bank has invested the funds for its own profit. It is obvious why inertia seems so prevalent; there is tremendous incentive to maintain the status quo.

The sophisticated forwarding process makes use of magnetic imprints on checks, high speed processing machines, and overnight couriers to whisk checks from the depository bank (the bank in which the check was deposited) to the payor bank (the bank upon which the check is drawn). According to Federal Reserve statistics, 99 percent of the checks deposited are credited to the depository bank within 48 hours of deposit.(9)

Upon receipt of credit, a bank can immediately invest the check funds and earn market interest rates off the float -- the period between when the bank has access to the funds and when the consumer can use the money. One extra day of float for the banking system has been variously estimated to produce $800 million to $1 billion a year in revenue.(10) Whatever the exact figure, the amount is clearly substantial.

On rare occassions, a check is not honored by a payor bank. The check must then retrace the same route it has just taken. However, instead of having the magnetic coding read by automated machines processing 100,000 checks an hour, each check must be individually examined by bank employees to decipher its destination. Instead of being whisked across country by couriers, a check is often simply mailed through the postal system.

From the bank's perspective, there is little reason to bring the return system into the twentieth century. The miniscule losses banks are subjected to certainly do not demand action. The Federal Reserve reports that only one percent of checks are returned unpaid.(11) Of the one percent that are returned, more than 60 percent are for amounts less than $100.00 and approximately half are paid the second time through the collection process.

The most comprehensive study of return item losses was released by the Bank Administration Institute in 1974.(12) According to this report, only one in every 5,245 returned checks must be written off by banks. 55 percent of these return items had to be written off because of bank or postal service mistakes; only 45 percent were due to an inability to collect from the consumer. The total estimated loss for banks was only $5 million. Even doubling or tripling this amount to compensate for the intervening years, it in no way compares to the $126 million consumers pay in overdraft charges due to hold policies.

With miniscule losses and substantial revenue from the interest earned on the float and overdraft charges, banks cannot be expected to move any faster toward a solution to a situation they don't regard as a problem. Without federal legislation, consumers will continue to bear the costs and inconvenience of a system that only serves to fill bank vaults with undeserved funds.

The Expedited Funds Availability Act

We commend Chairman St Germain for introducing H.R. 2443 and holding these hearings. Through these initiatives, an equitable situation may be achieved. By requiring adequate disclosure of bank hold policies, H.R. 2443 will protect consumers from a scenario that, despite the federal regulators' joint policy statement,(13) is still all too common -- having to pay overdraft charges for a check written on funds held under a policy never disclosed to the consumer. By mandating ceilings on the time a bank can hold funds deposited by check, consumers will be protected from interminable delays in gaining access to their money.

Temporary Availabilty Standards Are Not Necessary

We strongly recommend, however, that standard availability ceilings of one to three days from deposit be imposed upon enactment of the legislation. The temporary time limits, although curtailing the most egregious hold periods, will still subject consumers to hold periods that are longer than is justified by bank losses. Potential losses under stricter ceilings can be contained with both the arsenal of tools banks currently employ and the exceptions for high risk categories provided for in Section 5 of the bill.

The vast majority of consumers who are responsible for the 99 percent rate of checks that clear the system with no problem deserve access to their funds on a schedule paralleling the time when banks gain access to the funds. The Federal Reserve Board and American Bankers Association Task Force on Delayed Funds Availability suggested such a system, when they proposed that banks give established financially responsible customers access to funds when the banks receive credit.(14)

The individuals who inadvertently overdraw their account are already penalized by overdraft charges averaging 3,600 percent over the cost to the banks for losses and processing.(15) Banks can also deduct the amount of a returned check from the consumer's accounts, or add the amount to an outstanding loan.

Individuals engaged in criminal activities are deterred by bank personnel trained to examine checks for forgery or to detect suspicious account behavior, software programs employed to detect kiting, and criminal sanctions. The exceptions provided for in H.R. 2443 which exclude accounts with frequent overdrafts, new accounts, and checks over $5,000 further serve to deter such criminal activity.

In many instances, hold periods do not even provide any protection to banks. The United States League of Savings Institutions in Congressional testimony noted that checks often fail to return within the hold periods currently imposed. A New York savings institution, cited as an example, held local checks for seven days and imposed an eleven calendar day hold on out-of-state checks. Yet, only one percent of local checks and ten percent of out-of-state checks were returned within these periods. Hold periods such as these appear designed to enrich rather than to protect.

Some banks have already discarded lengthy hold periods. According to the U.S. PIRG survey, 18 percent of the banks surveyed grant immediate access to funds deposited by checks drawn on local banks. Over 10 percent hold out-of-state checks only two days. These banks set a strong precedent for the industry's ability to function under strict availability ceilings paralleling the receipt of credit.

Effect on State Consumer Protection Laws

Representing a network of PIRGs active at the state level, we are also disturbed by Section 6 of H.R. 2443. State PIRG efforts in New York and other states were undermined by the actions of the Federal Home Loan Bank Board and the National Credit Union

Administration in preempting state consumer protection laws. We, therefore, oppose the provisions removing nationally chartered institutions from potential state legislation on this issue.

Civil Liability Standards

The last suggestion we would like to make today concerns the civil liability provisions of Section 13. Under the existing language, banks could escape liability by merely showing that a violation was unintentional and resulted from a bona fide error. Consumers would therefore bear the burden of any damages resulting from a bank's negligent action. Consumers have carried the burden of bank hold policies for too long. Under H.R. 2443, banks should be liable for their own negligence.

Conclusion

The U.S. PIRG study documented the widespread problems of check holds. Although some banks have reasonable hold periods, the vast majority do not. Consumers, therefore, continue to bear the hardship of delayed access, bounced check charges, and/or total exclusion from banking services while banks profit from the interest earned on the float and the payment of overdraft charges.

U.S. PIRG urges the subcommittee to pass H.R. 2443 with the proposed amendments. By mandating ceilings on hold periods of one to three days, consumers throughout the United States will be assured of fair treatment in gaining access to their funds.

NOTES

1. "Held Up At The Bank: A Study of Check Hold Policies Across the Nation" was released in April of 1985. Copies were sent to all members of the House Banking Committee and are available to the public.

2. Summary of Survey Research Center Survey of Consumer Experience With Delayed Funds Availability, Hearings on the Fair Deposit Availability Act before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, 98th Cong., 1st Sess., 28 Sept. 1983, p. 42.

3. Statement of Preston Martin, Vice Chairman of the Federal Reserve Board, Hearings on the Expedited Funds Availability Act before the Subcommittee on Financial Institutions of the House Committee on Banking, Finance and Urban Affairs, 98th Cong., 2d Sess., 4 April 1984, p. 213 (hereinafter referred to as House Hearings). 2.7% of the 360 million returned checks (9.72 million checks) were returned due to uncollected funds.

4. Consumer Federation of America, "Bank Fees on Consumer Accounts," 28 May 1985, p. 9.

5. Federal Reserve Board, "Bank Service Charges and Fees: Their Impact on Consumers," p. 5.

6. Bank Administration Institute, *Recommendations for Exception Item Reduction*, 1975.

7. American National Standards Institute, Inc., "American National Standards Specifications for Check Endorsements," 2 March 1981.

8. Bank Administration Institute, *1983 Survey of the Check Collection System*, p. 38.

9. House Hearings, p. 192.

10. Steven Weschler, "Delayed Funds Availability," 35 Syracuse Law Review 1117, 1158 (1984).

11. House Hearings, p. 193.

12. Bank Administration Institute, *The Impact of Exception Items on the Check Collection System*, 1974.

13. House Hearings, p. 205-11. In March 1984, the federal regulators issued a nonbinding policy statement encouraging banks to disclose hold policies to consumers.

14. Delayed Funds Availability Task Force, "Final Report and Recommendations," 16 Feb. 1979, p. 10.

15. According to the Federal Reserve (House Hearings, p. 214), returned checks cost 0.36 per check. According to the Consumer Federation of America, the average overdraft fee charged by banks is $13.

Mr. SCHUMER. I will ask my questions, and I would first like to have the record note that when the consumer representatives came up to speak, all the bankers and the bankers' lobbyists, with a few notable exceptions, left.

I don't want to preach to the people who are here, but I hope that this is not an indication of their interest in consumer viewpoints and consumer issues.

Let me ask, first, we have all heard the conventional wisdom that shorter hold periods will lead to higher fees.

What kind of information, or what does your study show in terms of the fee hold period? Of course, you might say, even if it led to higher fees, why make 99 percent of the public pay for the 1 percent, but do you have any correlation, any indication of what the correlation is?

Ms. LIVINGSTON. Congress Watch did a study of 31 banks and savings and loans in the DC area earlier this year, where we asked them about their check hold policies, their fees and minimum balance requirements.

There were three banks in the survey that had good policies. Two of these banks held checks for 1 or 2 days, no matter where the check was drawn. The third bank held checks for 1 to 3 days.

We looked at all the banks according to their check hold policies as compared to their fees, and found no correlation between those two different statistics.

Mr. SCHUMER. Any of the other witnesses?

Ms. MEIER. Consumers Union just did a three-part series on banking issues in Consumer Reports Magazine, and I have correlated the responses from a great number of banks as to what their checking account fees were, and their savings account fees were versus what their hold policies were, and we found no correlation between high fees and short holds policies.

Mr. SCHUMER. Any other?

Mr. CAUDELL-FEAGAN. Our study did not look at fees and therefore, we could not do a comparison.

Mr. SCHUMER. I will resume my questioning from a more customary perch. In yesterday's testimony, we heard from the ABA and also, in the written statement, that consumers generally have not expressed dissatisfaction with the check clearing system, and the corollary to that is, if they really did, the market would respond and things would change.

Comments?

Mr. FOX. I think there are a couple. One is the statistical evidence that, as the Fed itself has pointed out in its surveys, 15 percent of all consumers stated that they have a problem, and I believe they probably would not say so, unless they were discussing financial loss, serious loss of convenience and so on.

Based on the number of households, the number of accounts that there are, let me say, there are probably 10 or 12 million households that have had problems with check holds that have caused them monetary loss.

We don't wait until there are 10 to 12 million problems a year before doing anything. Certainly, the banks would be coming up here very quickly if they had 12 or 12 million check kiting schemes a year and looking for additional legislation.

Furthermore, every one of us has anecdotal evidence, you go out and talk to consumers, and say I am working on banking issues, the first thing you hear are problems with check holds.

It is the first thing that comes up, when we speak to consumers, organized, or people on the street.

Mr. SCHUMER. My informal survey of the Banking Committee staff, that is up here, indicated a very high percentage had trouble with check holds.

I have a second question, which is this: We are in a free market economy. If this is such a serious problem, why haven't banking institutions responded, and in my question to vice chairman Martin, I asked him why the Riggs Bank was able to do things in 1 or 2 days, and he said, "That is great; let the market have its various responses and let the consumers choose."

Responses?

Mr. FOX. You need good information on which to choose, and as with many bank practices, particularly information on check holds, it is extraordinarily hard to come by. You see that in the differences between the testimony we have presented about the prevalence of long check holds and the testimony by the industry, where they say there are no problems at all.

People going into banks can get three different answers from three different people at the bank if they are lucky enough to find someone who will talk to them.

There is not adequate information, and I don't think that there is any way legislatively we will be able to provide adequate information.

Mr. SCHUMER. What about disclosure as an answer?

Mr. FOX. Disclosure alone won't do the job. The periods—it doesn't do consumers very much good if the periods are still longer than necessary.

One of the problems most consumers would have is not knowing whether—we get upset at 5 days as a hold period, but we don't know if that is reasonable or not.

A lot of consumers can very easily take that as what the truth is.

Mr. SCHUMER. Next question, Ms. Livingston?

Ms. LIVINGSTON. There are so many thing that a consumer has to look at these days when deciding which bank to choose, fees, minimum balance, convenience, previous loan relationship, that it is unfair to say they must choose a bank on the basis of check hold alone.

There is also no reason for lengthy check hold policies, even if there are good and bad banks in a market. The bad banks shouldn't be putting lengthy holds on a check.

Chairman ST GERMAIN. Excuse me, would you define a bad bank? That is a rather irresponsible term.

Ms. LIVINGSTON. I mean a bank that is putting an inordinate delay on a check. I am not trying to evaluate a bank in any other way.

Chairman ST GERMAIN. You don't want to say bad bank, do you?

Ms. LIVINGSTON. No, bad check hold. The story that I discussed in my testimony shows how difficult it is for a person to escape long hold policies.

I told about a man who wanted to escape holds on his paychecks so he went to his employers' bank and the next thing that happened was that that bank subsequently put holds on his wife's paychecks so he was not able to escape the hold any way in that instance.

Ms. **Meier**. Congressman, I was going to respond in the way Ms. Livingston did in her first response to your question regarding competition.

Consumers have a lot of factors to take into consideration in choosing a bank.

One of the main factors, criteria they use, as has been demonstrated in different surveys, is the convenience in terms of location of the bank.

A lot of banks are not even open past 2 or 3, so a consumer must have a bank near where he works or lives. These days the consumer is even lucky to even find a bank that he can afford.

So, the bank might be affordable, but the holds might be long, and I believe that banking institutions take all of these selection criteria into account in devising a holds policy.

Mr. **Caudell-Feagan**. One other point. In the U.S. PIRG study, we found there is a vast majority of banks imposing excessive holds. Those holds are often concentrated in certain areas. If consumers were able to travel 10 or 20 miles everytime they needed their bank, then disclosure might lead to reduced hold periods.

As was suggested, however, there are other criteria that consumers have to take into consideration. Often consumers don't have the option of taking advantage of banks with reasonable hold periods.

Mr. **Schumer**. I thank the witnesses for their testimony, and the few bankers and banking lobbyists for remaining.

Chairman **St Germain**. I was about to observe, for obvious reasons, you understand, how this hurts; for as I look at the press table, and there is hardly anyone there, whereas earlier, when the Federal Reserve Board was here, the press was all here to hear why we cannot or should not enact legislation.

It is typical. For some strange reason, the press does not react to the pleas of the consumer as they do to the dissidents of the regulators. Although, I must say the NCAU testimony was very, very helpful to us.

I would like to read something here. Here is a letter from the Houston Clearing House, Fred J. Redeker. It tells us what wonderful things they are doing at the Houston Clearing House, and I looked at the wonderful things they are doing and they are about as impressive as what was in the Fed testimony.

"If Congress pursues the passage of H.R. 2443 as it now stands, it should be aware of the results to an entire industry and its customers." Really and truly, some people might consider this a veiled threat; "higher cost of account ownership."

[The letter referred to follows:]

HOUSTON CLEARING HOUSE ASSOCIATION
[illegible]
[illegible]
HOUSTON, TEXAS
[illegible]
[illegible]

FRED J. REDEKER
EXECUTIVE VICE PRESIDENT

October 7, 1985

The Honorable Fernand St. Germain
Chairman, Committee on Banking, Finance and Urban Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The Houston Clearing House Association and its nearly 300 members support any effort to ensure the financial wellbeing of all customers who bank at any of its financial institutions. Therefore, we have closely followed the issue of funds availability.

Twice now, in 1984 and again in 1985, we surveyed our members regarding current check hold practices and public disclosure of their policies. We believe the surveys are significant and have attached the results for you. In brief, they assure us that our members are already expending their best efforts to make funds available as soon as possible with the least inconvenience to their customers--without being legislated to do so.

If Congress pursues the passage of HR 2443 as it now stands, it should be aware of the results to an entire industry and its customers: Higher cost of account ownership, difficulty in establishing new accounts for the customer; for the banks, astronomical costs to develop and implement the necessary communication networks for notification and apprehension of worthless items.

The Houston Clearing House Association strongly urges Congress to avoid unnecessary legislation that would incur a substantial financial burden on an industry and its customers already troubled by a seriously uneven economy. It is the position of our membership that all risks to the financial institutions which could be affected by the various points of HR 2443 should be thoroughly and accurately identified before Congress proceeds further with this bill. We suggest that Congress make use of the Federal Reserve and other financial institution regulators, including representatives of state regulatory agencies. This should be done to insure that all pertinent safeguards are also implemented with required changes, thereby avoiding any threat to the safety and soundness of the financial services industry.

The Houston Clearing House Association will continue to cooperate closely with regulators and members of Congress in order to achieve improvements in the provision of banking services to our industry's customers. To that end, Mr. Chairman, we respectfully request that you include this letter, communicating our position and the results of our efforts, in the testimony that your committee is considering regarding this important issue.

Sincerely,

Fred J. Redeker
Executive Vice President

FUNDS AVAILABILITY SURVEY REPORT
1984-1985

When the American Bankers Association and the Federal Reserve called upon the banking industry to examine and update, if necessary, its policies regarding holds placed on checks and the disclosure of such policies to its customers, the Houston Clearing House Association was ready to respond. Most recently, in May, 1984, the Federal Reserve requested banks to "review their policies, consider whether the delay periods can be reduced, and disclose their policies to customers in an effective manner." By early summer, HCHA had responded with a survey of its members to determine how well the public was indeed being served, and whether or not legislation to govern fair funds availability was needed.

Just this summer, the survey was re-distributed to pinpoint any improvement or deterioration in the quality of members' efforts to serve their customers well. While the reponse rate was 72% to the first survey (180 out 240 members responding), the rate increased to 91% (236 out of 256 members responding) in the 1985 survey. The second survey resoundingly confirmed the stand taken by the Houston Clearing House Association following the 1984 survey: legislation is not needed to control holds placed on checks or the disclosure of such policy.

The surveys were divided into six different groups according to bank deposit size. The results of each group, as shown below, are matched up against the results of all six groups combined.

HOLD POLICIES

The survey showed the following in response to whether or not banks place "HOLDS" on certain types of checks deposited:

DEPOSIT SIZE (in millions)	YES	NO	NO RESPONSE
0-20	100%		
20-50	100%		
50-100	100%		
100-1000	98%	2%	
1 Billion +	100%		
Edge Act Banks	67%	17%	16%
ALL BANKS COMBINED	97%	2%	1%

The banks emphasize, however, that they minimize the use of "HOLDS" to the extent consistent with the safety and soundness of the bank, and the avoidance of unnecessary losses to the bank. Also, while 97% of the banks responding to the survey said they placed "HOLDS" on deposited checks, the number of "HOLDS" actually placed on a daily basis is minimal. Only one-tenth of the 1% of deposited checks have "HOLDS" placed on them.

In 1985, 93% of responding banks indicated they place "HOLDS" on checks for various reasons, down 4% from 1984.The most frequently given reasons for placing holds on checks included:

1. Account less than 90 days old
2. Location of issuing financial institution
3. Unusually large item for customer
4. Poor account history (i.e. NSF, OD, RIE)

5. Insurance drafts
6. Unfamiliar payor
7. Low account balance in relation to item being deposited
8. Personal transfers from other financial institutions
9. Third-party checks
10. Kiting suspect
11. Less cash deposits

In addition to protecting the bank, "HOLDS" protect the customer as well. A "HOLD" avoids the possibility of the customer spending funds that are in fact not good funds, placing the customer in the position of repaying the bank.

Besides protecting the customer, "HOLDS" help reduce the risk of check kites, forgeries, and checks returned for insufficient funds, closed accounts, etc. The length of the holds depends in some degree on the locale of the payor bank. The banks stress that their "HOLD" policies are based primarily on return time which can be considerably slower than the original presentment time. For example, even the return of a local item could result in a four-day time period if the item being returned were mailed over a weekend. The following chart offers an accurate description of the length of holds:

DEPOSIT SIZE	LOCAL ITEMS LENGTH*	%	TEXAS ITEMS LENGTH*	%	OUT-OF-STATE ITEMS LENGTH*	%
0-20	≤ 5 days	89	≤ 7 days	78	≤ 10 days	72
20-50	"	88	"	58	"	53
50-100	"	90	"	43	"	57
100-1000	"	92	"	64	"	56
1 Billion +	"	100	"	67	"	83
Edge Act Banks	"	100	"	83	"	83

* Length measured in calendar days.

CHANGES OF NOTIFICATION

If payor banks were required to notify banks of first deposit on check amounts of $250 or more rather than the current Federal Reserve standard of $2,500, banks would experience a significant cost increase. When asked to compare percentages of $2500 items processed to the number of items over $250 requiring notificaton, the 1984 surveyed banks responded with the following percentages:

PROJECTED INCREASE IN VOLUME WITH INCREASE IN NOTIFICATION

DEPOSIT SIZE	CURRENT % OF VOLUME FOR ITEMS OVER $2500	% IF REQUIREMENT CHANGED FOR ITEMS OVER $250
0-20	2.27%	52%
20-50	3.06%	43%
50-100	3.30%	61%
100-1000	2.70%	43%
1 Billion +	3.20%	37%
Edge Act Banks	NO DATA PROVIDED	
ALL BANKS COMBINED	2.90%	47%

These figures remained constant in 1985.

POLICIES REGARDING TREASURY CHECKS

Because there is concern with holds placed on Social Security checks and other checks drawn on the United States' Treasury, the banks were asked how long it took them to make funds available on these checks. Ninety percent said they made funds available on the day of deposit.

DISCLOSURE OF "HOLD" POLICIES

Of the reponding banks, 99% said that they do inform customers of their "HOLD" policies. This is done in various ways:

1. Verbally, at the time of the transaction
2. Verbally and in writing (e.g. bank flyers), at the time of the transaction
3. Individual letter or form mailed after deposit
4. Phone call after deposit
5. Lobby displays explaining funds availability policies

Well over half of the respondents indicated that the customer is informed of a "HOLD" at the time one is placed. Furthermore, most of the banks review their "HOLD" policies on average every 9 months. Ninety-four percent (94%) said that they generally enforce these "HOLD" policies but are also flexible in specific cases when warranted. Again, only about one-tenth of one percent of all checks deposited have "HOLDS" placed on them.

In conclusion, the volume of items involved in the funds availability issue represents a small fraction of the total volume of items and money deposited, processed, or exchanged by member banks on the behalf of their customers. Examination of the results of the Houston area studies indicate that our member banks deal with this small fraction of hold items through justifiable and responsible means.

If we do away with check holds, they will get us another way. They will increase the cost of the account ownership. They will tell you that they don't want your checking account.

As they tell us, banks must contend with astronomical costs when developing and implementing the necessary communication networks for notification, and also have a fear of worthless items.

I am going to tell them to go see Chalmers Wylie and find out which—I think he went to a Safeway that cleared his check in a matter of seconds when he was shopping in Columbus.

The margin in supermarkets is very low. It is peculiar that they can have a check clearing device that is instantaneous, whereas the large institutions are unable to. I will now call on my distinguished friend from the city of Chicago to whom I express my appreciation for chairing the subcommittee while I had to absent myself.

Mr. Annunzio.

Mr. ANNUNZIO. Thank you, Mr. Chairman.

Your inquiry on the press not being here, Mr. St Germain. When you buy a newspaper you find a financial section. The bank regulators have been making all of the news lately anyway, with the banks closing, and bank examinations not going as well as they should go.

So I would like to advocate that we have a consumer page. People turn to the financial page, you should have a section known as a consumer's page, and that way, you probably would get more people paying attention. But the average consumer, with all the mail that I get as chairman of the Consumers Affairs Subcommittee, they know what is going on, but they don't react until they are personally hurt. That is one of our big, big faults.

For nearly 3 years, Congress has had hearings on the question of check holds. There have been both public and private sector studies of this problem. Is there really any reason, and I said this in an earlier statement, why the subcommittee should not begin to markup and report a bill immediately? How do you feel about that?

Ms. LIVINGSTON. I think that there is every reason to mark up this bill immediately. What you are saying is absolutely correct. There have been years of studies, recommendations, promises for voluntary action and yet, all we see is continued complaints about long check hold policies.

The Feds have said the statistics of people who have had problems with delayed funds has even gone up in the past year. We need legislation and this subcommittee should act immediately.

Mr. ANNUNZIO. We are close. The Federal Reserve Board was here answering to Mr. Barnard, they are willing to bend a little bit, if I understood them right. I hope so. I think we can reach some kind of an agreement.

Mr. Fox.

Mr. FOX. I agree completely with Ms. Livingston. The Fed itself has presented evidence that the problem as perceived by most consumers is getting worse over the last 2 years, and we can look at what the Fed has done.

They have managed to put one standard in, regulation J, that deals with direct notification of checks of $2,500 or more.

There are some typical consumers who that will affect, but for the average consumer, they don't see a $2,500 check more than once or twice in their lifetime.

We are talking about people who deposit $300, $400, $500 paychecks and need to pay the rent, utilities out of that, they receive no relief from the rule, and they can anticipate no relief from the rule.

The only place they have to turn is to their Members of Congress, and we join them in that.

Ms. MEIER. Just really to second what my two previous colleagues have said, yes, I see no reason to do any more studies, particularly if you have a liking for our recommendation of immediately going to 1- to 3-day holds, the system is absolutely ready to handle that sort of a scheme and even as the bill stands now, we are ready to go ahead.

We know how the system works.

Mr. CAUDELL-FEAGAN. I agree, and I urge you to move rapidly on this problem, and also on all the other problems consumers are facing. The not-very-well-veiled threat from the Houston Clearing House is a reality for many consumers who are already subjected to higher fees, or are excluded from banking services by minimum balance requirements climbing from $500, to $1,000, to $1,500 to maintain an account.

These all have to be addressed.

Mr. ANNUNZIO. Some day a study will be made on the effects that deregulation has had on the consumer. It was a sad, sad day when we deregulated. Interest rates were all over the board, charging different rates to attract the consumers, and the consumer dollars, they were running, just like the financiers, and wealthy people, they were going to the institution that was paying the highest interest rate, and this is some of the effects of deregulation, and the hardships that it brought on the average consumer, the average person, to their lives.

Now, if the banks are collecting, Ms. Livingston, $125 million a year in overdraft charges due to check holds, is there any incentive for banks to reduce check holds if they must lose $125 million, really, it is free income?

Ms. LIVINGSTON. We haven't seen any incentive on the part of the banks to clear up the check return process, and the length of time it takes them to actually credit our checks. The incentive has been for them to get credit for the funds deposited immediately, so we see a very fast forwarding process.

The incentive has not been there to do that in the reverse.

Mr. ANNUNZIO. I have just one question, Mr. Chairman. If we prohibit the banks from charging for overdrafts, do you think check hold periods would be reduced or eliminated?

Ms. LIVINGSTON. If we didn't allow them to charge for bounced checks any more?

Mr. ANNUNZIO. If we prohibited the banks from charging overdrafts, do you think that the check hold periods would be reduced or eliminated?

Ms. LIVINGSTON. No; I don't think they have the hold so they can charge this bounced check fee, but there has been inattention to this problem because of the lack of incentive to speed it up.

Mr. ANNUNZIO. They are making $125 million over these overdrafts.

Ms. LIVINGSTON. And making profits of float.

Mr. ANNUNZIO. What do you think about that? Do you think the banks would react, and reduce or eliminate the period?

Mr. FOX. I think it is the income the float that probably means the most for the banks. One of the difficulties we have had in all the hearings is coming up with an estimate for how much income does derive from the float.

We were able to come up with a quick estimate for the bounced check charges, because that comes directly out of consumers' pockets, but that $125 million figure is the tip of the iceberg on the benefit to the banks.

Mr. ANNUNZIO. Any time you shut off the spigot, the banks react like any other business group reacts. If they are not making any money, they will cut down the period. Do you agree with that?

Mr. FOX. If there is no profit from the float, they won't have the incentive. We were looking at the written testimony of Governor Martin, and even the Fed says there are no incentives in the current return system to get checks moving back quickly.

If you knocked out any element of the income from the banks to that system, you could create some incentives. We think the reduced check hold periods would do the same.

Mr. ANNUNZIO. Thank you very much, Mr. Chairman. I want to express my appreciation to the panel for your testimony this morning, and your support.

Chairman ST GERMAIN. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

One of the questions I had was, we have heard from different witnesses here that this is a big bank problem. Others say it is a big bank problem. Some say it's an urban problem, others say it's a rural problem. Have you found in your studies and pursuits of this issue that it is a particular group or type of bank that is worse than the others?

Mr. CAUDELL-FEAGAN. There is no correlation we can find between bank size, bank location, or rural or urban location.

The small banks come in and say, we know our customers, we don't need to put holds on, and they come in and tell you, well, we need longer holds because of our use of correspondent banks.

Contradictions such as these leave consumers incredulous.

Mr. FOX. There is a perception that it is something that is a problem at the big banks in the faceless big cities, and it is not a problem anywhere else.

I have an anecdote and they seem to be in style at these hearings. There is a gentleman who lived and had his bank in one community, was employed in another community, and his paycheck was drawn on a bank in the community in which he worked.

He received his paycheck, deposited it in his own bank, 50 miles away and immediately wrote 10 checks. Every one of the 10 checks bounced. It cost him fees of $10 per check by the bank and $10 by each person he wrote the check to, $200.

There was a 5-day hold for established accounts. This occurred in West Virginia, where presumably, a couple of small towns where everyone knew everyone else, and where he was banking at a bank where he was well known.

I am told by the West Virginia Attorney General's Office that they have just completed and will release in the next couple of weeks a survey of all of the State banks in the State.

They got 109 of 117 to respond. The Attorney General's Office has better luck on response ratios than consumer groups do for some reason, they will release that report very soon, and based on the information I have seen, the check hold problem in West Virginia is just as acute as the problem in Washington, DC, New York City or any other big city.

Mr. SCHUMER. The second question, what would you think of a requirement that, since the teller makes the decision whether to impose a hold or not, requiring the teller to inform the consumer, whether or not a hold will be placed on specific checks at the time of deposit.

Ms. MEIER. We support requiring if a hold will be placed, informing the consumer at the time of deposit. A bank I used to be at and left, because of other problems, did recently institute a procedure whereby the receipt deposit slip had a box in it that the teller was to fill out, to inform the consumer when the deposit was made of the length of the hold that would be placed on the check.

This seems to be easy, printing new slips, and telling the tellers to use them.

Mr. SCHUMER. We would know how many checks were actually being held, though it would be an incentive not to hold the check if each time a consumer went up there he was specifically informed.

Ms. MEIER. Exactly.

Mr. SCHUMER. The link between hold periods and detection of fraud is one of the things that all of the witnesses stressed, claiming that they need the holds to deal with fraud. Since 15 percent of all checks are returned after the hold period expires, doesn't that indicate that the link is not as strong as the witnesses testified.

Mr. FOX. Even the 15 percent figure is low. Governor Martin misquoted from his own written testimony——

Mr. SCHUMER. Repeat that.

Mr. FOX. Fifteen percent of the checks are returned more than 10 days later, not longer than the hold period. The hold period is frequently 5, 6, 7 days, which is excessive, but not 10 days.

There is a study in New York which we have cited, and it is on page 8 of Ms. Livingston's testimony, which suggests at the one S&L studied, only 1 percent of the checks returned by local institutions were received within a 7-day local hold period, and that is an unusually long hold period.

In a lot of other markets, it simply suggests that no checks at all ever come back before the hold period on local checks expires.

Chairman ST GERMAIN. Mr. Carper.

Mr. CARPER. Thank you.

I apologize for not being here for all the testimony. I have a question—do you think we should enact a Federal law that is uniform for the entire country, for every State, or should we have a law that does or does not preempt existing State laws?

Do you have an opinion on that question?

Ms. **Livingston**. Yes. I think that the committee should make a choice, and either enact a Federal standard that would apply to all institutions, whether they are federally or State-chartered, or the committee should set a Federal floor and allow States to enact stronger consumer protection laws.

But if that is the case, the State law should apply to all institutions in that State, to avoid a double standard.

Mr. **Fox**. At a minimum within any given State, every institution should be subject to the same rules. We are played like ping-pong balls between federally and State-chartered institutions, and the result is whatever standards you are dealing with tend to get weakened to the lowest common denominator, so within any State, for reasons of protecting consumers, and competitive equality, all institutions ought to have the same standard.

Mr. **Carper**. We are getting to a time where we have not just intrastate banking, but regional banking, and in a sense, we have interstate banking.

With that in mind, my same question, since banks don't just deal solely with banks in their own boundaries, and we will see banking across the Nation, throughout regions, should we have a uniform standard for everybody or do you still believe we should let each State set a tougher standard if they wish?

Mr. **Fox**. Speaking for myself, and we have not talked about this among ourselves, if the committee were to set standards that are very tight standards, that can be justified by current practices, if we were to go immediately to a system of no more than 3 or 4 days availability on any check, 1-day availability on local checks, I wouldn't have any real problem with saying that the States cannot apply any stricter standards.

I doubt that any stricter standards would be appropriate. We have a payments mechanism largely interstate, regardless of whether the banks themselves operate interstate, but if what is going to come out in legislation are time periods which are much lengthier than that, I would think the individual States should have the right to argue for stricter protections for their consumers, as long as they are able to apply those equitably to all institutions in the State.

Mr. **Carper**. Did any of you, in your testimony, address the question of what we in the Congress can legitimately do to speed up the return process?

We all have focused in on the return process, and how slowly it moves. What have you recommended that we do, this Congress, to reduce that delay in the return process?

Ms. **Meier**. Well, we—me in particular—described a recommendation to improve the bill to make the maximum hold period 3 days, which tracks the time period that the bank has to get provisional credit for all the checks.

That is the maximum time before which they receive provisional credit for a deposited item.

That scheme does not contemplate improvements in the return system. We are skeptical that the regulators and the industry will come up with any type of improvements in the return system within 5 years, that they are going to agree are cost-effective improvements. And frankly, as our second and probably stronger reason, we don't see any need at this point to premise legislation setting forth maximum hold periods on improvements in the return system, since we already see some small and large banks, like Bank of America, who are already giving immediate availability for most checks, and placing holds on an exemption item basis on less than 1 percent of their checks.

So that scheme, whereby you grant immediate availability, or a provisional credit scheme with exceptions in high-risk situations, is what is immediately doable right now.

However, we will say that we have no objections, of course, to improvements in the return system and mandating——

Mr. CARPER. My question was how do we improve?

Ms. MEIER. Whenever I talk to anyone in the Federal Reserve about the projects they have got going, all I hear are problems.

I at this point have sort of side-stepped the issue until we get further into some schemes that the regulators and the industry believe are workable. The proposal I just stated, that if they want to improve the return system, that is fine and if they do, we can avoid the exception provision in the legislation and have 1- to 3-day availability for all checks.

Mr. CARPER. What can we do legislatively to speed up the return process?

Mr. FOX. It is clear to us that the improvements are doable, that despite all the talk about technological barriers and cost barriers, if the industry and the regulators had an interest in speeding it up, they would.

I am not an expert, technical expert, but the idea of putting return items in an envelope and using the existing sorting and magnetic ink machinery to move the item back seems to be a good possibility. The machinery is there, and it doesn't seem to be a high-cost, difficult thing to do.

Since the industry doesn't seem to see any incentives, and the regulators don't see any, Congress is going to have to mandate that they get together and give them time limits.

Chairman ST GERMAIN. The answer to the question is: The adoption of the legislation before us or something similar thereto, will then expedite the expediters, the Fed and the financial institutions, because then they will find that they better get it done for their own good.

They will get it done.

Mr. CARPER. Thank you, Mr. Chairman.

Chairman ST GERMAIN. On the question of Federal and State, we can legislate for federally insured institutions. States, however, can only legislate for State-chartered institutions, as we found out when New York issued their regulations. The Federal Home Loan Bank Board told the federally chartered S&L's in New York State that they didn't have to comply.

The legislation we adopt should be in the form—at least this is what I am going to suggest where we set the Federal standards—of not precluding the States from setting more stringent standards, if they so desire. I think that that is probably what might be acceptable to the membership of the committee and to the House.

Chairman ST GERMAIN. We thank you for your testimony, and the subcommittee stands in recess until the call of the Chair.

[Whereupon, at 12:50 p.m., the subcommittee recessed subject to the call of the Chair.]

[Letters of invitation and an additional statement were submitted for inclusion in the record:]

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

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NINETY-NINTH CONGRESS
WASHINGTON, DC 20515

[illegible]

October 2, 1985

Mr. Donald Winn
Assistant to the Board
Federal Reserve System
20th and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Mr. Winn:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. A representative from the Federal Reserve is requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

The rules of the House Banking Committee require that you deliver 175 copies of your prepared statement to Room B303 Rayburn by 12:00 noon the day before your scheduled appearance. Your prepared statement will be included in its entirety in the hearing record, and if delivered to the Subcommittee by the time specified, it will be distributed to all Members of the Subcommittee in advance of the hearing. To enable all Subcommittee Members sufficient time for questioning, your oral presentation of your testimony will be limited to ten minutes.

Sincerely,

Fernand J. St Germain

Fernand J. St Germain
Chairman

FJStG:jDe

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WASHINGTON, DC 20515

[illegible]

October 2, 1985

F.A. Mack, Jr.
Vice Chairman
National Credit Union Administration
1776 G Street, N.W.
Washington, D.C. 20456

Dear Mr. Mack:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:jOe

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WASHINGTON, DC 20515

October 2, 1985

Ms. Franci Livingston
Staff Attorney
Congress Watch
215 Pa. Ave., SE
Washington, D.C. 20003

Dear Ms. Livingston:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:jOw

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WASHINGTON, DC 20515

October 2, 1985

Mr. Alan Fox
Legislative Representative
Consumer Federation of America
1424 16th Street, N.W.
Suite 604
Washington, D.C. 20036

Dear Mr. Fox:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

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October 2, 1985

Ms. Michelle Meier
Counsel for Government Affairs
Consumers Union of U.S., Inc.
2001 S Street, N.W.
Suite 520
Washington, D.C. 20009

Dear Ms. Meier:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

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TOBY ROTH, WISCONSIN

October 2, 1985

Mr. Michael Caudell-Feagan
Staff Attorney
U.S. Public Interest Research Group
215 Pa. Ave., SE
Washington, D.C. 20003

Dear Mr. Caudell-Feagan:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain

Fernand J. St Germain
Chairman

FJStG:jOe

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TOBY ROTH, WISCONSIN

October 2, 1985

Honorable Joe Selby
Acting Comptroller of
the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Selby:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:jOe

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MARGE ROUKEMA, NEW JERSEY
DOUG BEREUTER, NEBRASKA
STEVE BARTLETT, TEXAS
TOBY ROTH, WISCONSIN

October 2, 1985

Honorable William M. Isaac
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Chairman Isaac:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

The rules of the House Banking Committee require that you deliver 175 copies of your prepared statement to Room B303 Rayburn by 12:00 noon the day before your scheduled appearance. Your prepared statement will be included in its entirety in the hearing record, and if delivered to the Subcommittee by the time specified, it will be distributed to all Members of the Subcommittee in advance of the hearing. To enable all Subcommittee Members sufficient time for questioning, your oral presentation of your testimony will be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:jOe

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October 2, 1985

Honorable Edwin J. Gray
Chairman
Federal Home Loan Bank Board
1700 G St., N.W.
Washington, D.C. 20552

Dear Chairman Gray:

The Financial Institutions Subcommittee will hold hearings beginning on October 9, 1985 on H.R. 2443, the Expedited Funds Availability Act, legislation which addresses the problem of depository institutions delaying availability of customer deposits for an unjustifiable length of time. You are requested to appear before this Subcommittee on October 10th, at 10:00 a.m., in Room 2128 of the Rayburn House Office Building, to provide testimony on H.R. 2443.

The rules of the House Banking Committee require that you deliver 175 copies of your prepared statement to Room B303 Rayburn by 12:00 noon the day before your scheduled appearance. Your prepared statement will be included in its entirety in the hearing record, and if delivered to the Subcommittee by the time specified, it will be distributed to all Members of the Subcommittee in advance of the hearing. To enable all Subcommittee Members sufficient time for questioning, your oral presentation of your testimony will be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:jOe

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(202) 225-4247

October 7, 1985

Honorable William M. Isaac
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Chairman Isaac:

Your office was contacted by my staff by phone on September 23, 1985, and by letter on October 2nd regarding testifying at hearings on the Expedited Funds Availability Act, H.R. 2443. As I have not received a written reply to my October 2nd letter, I assume that you are not appearing before the Subcommittee on this significant piece of consumer legislation. I am truly disappointed that you have apparently elected to not testify. The problem I am attempting to address in H.R. 2443 -- the delayed availablity of depositors' funds -- is not a new concern. We held hearings on this concern last year.

I cannot help but note that your agency in the past has utilized every opportunity regardless of the brevity of the notice, to testify on issues of interest to the institutions under your jurisdiction.

I hope that you will formally reply to my invitation before these hearings conclude on October 10th.

Sincerely,

Fernand J. St Germain
Chairman

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(202) 225-4247

October 7, 1985

Honorable Joe Selby
Acting Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Selby:

Your office was contacted by my staff by phone on September 23, 1985, and by letter on October 2nd regarding testifying at hearings on the Expedited Funds Availability Act, H.R. 2443. As I have not received a written reply to my October 2nd letter, I assume that you are not appearing before the Subcommittee on this significant piece of consumer legislation. The problem I am attempting to address in H.R. 2443 -- the delayed availablity of depositors' funds -- is not a new concern. We held hearings on this concern last year, and Mr. Conover appeared and testified.

I am truly disappointed that you have apparently elected to not testify. I cannot help but note that your agency in the past has utilized every opportunity regardless of the brevity of the notice, to testify on issues of interest to the institutions under your jurisdiction.

I hope that you will formally reply to my invitation before these hearings conclude on October 10th.

Sincerely,

Fernand J. St Germain
Chairman

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(202) 225-4247

October 7, 1985

Honorable Edwin J. Gray
Chairman
Federal Home Loan Bank Board
1700 G St., N.W.
Washington, D.C. 20552

Dear Chairman Gray:

Your office was contacted by my staff by phone on September 23, 1985, and by letter on October 2nd regarding testifying at hearings on the Expedited Funds Availability Act, H.R. 2443. As I have not received a written reply to my October 2nd letter, I assume that you are not appearing before the Subcommittee on this significant piece of consumer legislation. The problem I am attempting to address in H.R. 2443 -- the delayed availablity of depositors' funds -- is not a new concern. We held hearings on this concern last year, and you appeared and testified.

I am truly disappointed that you have apparently elected to not testify. I cannot help but note that your agency in the past has utilized every opportunity regardless of the brevity of the notice, to testify on issues of interest to the institutions under your jurisdiction.

I hope that you will formally reply to my invitation before these hearings conclude on October 10th.

Sincerely,

Fernand J. St Germain
Chairman

One United Bank Center
1700 Lincoln Street
Denver, Colorado 80274
Telephone (303) 861-4700

United Banks of Colorado, Inc.

N. Berne Hart
President and
Chairman of the Board

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Subcommittee on Financial Institutions
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Banking, Finance & Urban Affairs Committee

October 15, 1985

Honorable Fernand St Germain
Chairman
House Committee on Banking,
Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Re: HR 2443 EXPEDITED FUNDS AVAILABILITY ACT

Dear Chairman St Germain:

On behalf of United Banks of Colorado, Inc., we offer these comments to be included in the hearing record concerning the above referenced bill to be considered October 9-10, 1985.

United Banks is a multibank holding company with 31 banks located in Colorado and total assets in excess of $4 billion.

We support efforts to reduce the amount of time it takes for a consumer's deposit to become available. It is a common goal of all financial institutions to reduce the time it takes to receive final credit on checks in the collection process. The reduction of these time periods benefits not only the consumer, but also the financial institution. The consumer benefits in that deposited items become available in a more timely manner. A financial institution benefits in that the timely collection of deposited items will increase a depository institution's return on assets. For example, United Banks operates the largest check processing center in the Rocky Mountain Region and the reduction of float is of significant interest to us.

We are not convinced that the Expedited Funds Availability Act correctly addresses this controversial issue. During the past year, the financial regulatory agencies issued policy statements encouraging banks to review their hold policies, to reduce hold periods whenever possible, and to disclose hold policies to customers. We believe that the majority of financial institutions complied with the regulator's joint policy statement. Indeed, few institutions abuse check hold policies in order to profit from collected funds. When such institutional problems are identified, the financial regulatory agencies can correct abuse through the examination process.

We are convinced that consumers have become aware of this issue and are well informed about the hold policies of the financial institution where they make deposits. The marketplace imposes substantial pressure on financial institutions to remain competitive with respect to hold policies. Institutions that disclose hold policies can utilize them in a competitive way. Not only can a financial institution "market" its hold policies, it may also find that hold policies offer a competitive edge to attract potential new customers.

In this regard, the consumer has an ability to comparison shop and determine which institution can best satisfy his needs. In addition to the disclosures that banks routinely make, information is provided by the news media as indicated in the enclosed table from the October 8, 1985 Rocky Mountain News.

Another movement to reduce hold periods is seen in the recent amendments to the Federal Reserve's Regulation J. These amendments, which became effective on October 1, 1985, should also serve to reduce the amount of time a financial institution places a hold on deposited items. By requiring a payor bank to provide notification to the bank of first deposit when an item will be returned unpaid, a financial institution will have the ability to reevaluate the length of time it holds deposited items. Because the amendments to Regulation J have just become effective, few financial institutions have had the time to reevaluate hold policies in light of this new requirement. Therefore, it is premature to conclude that further restrictions are necessary.

United Banks has already devoted efforts to implementing controls and procedures to promptly provide notification and to effectively receive notification. In accordance with prudent business practices, we will reevaluate our hold policies once we believe that the notification requirements are established. At that point, we will be in the position to evaluate the amount of time it takes to act upon receipt of return notification to minimize losses to the bank and ultimately to our customers. To enact the Expedited Funds Availability Act at this time is to negate the potential improvements to the check clearing process that could be realized through the amendments to the Regulation J notification requirements. It also ignores the costs incurred throughout the banking industry in developing the systems to comply with the new notification procedures.

We are also concerned about the potential for confusion when a check is returned unpaid after the legislated hold period has elapsed. The Expedited Funds Availability Act attempts to address this issue in Section 6(3). This section states that a depository institutions' right of chargeback is not affected by this bill. We would argue that the expiration of the hold period leads to the assumption that credit is final. A consumer who deposits funds and waits until after the expiration of any hold period will not readily accept a chargeback. In fact, chargebacks occurring after the expiration of hold periods will most likely lead to a situation that is more controversial than the delayed funds availability issue.

For example, if a customer's deposit is returned unpaid, the bank must debit the customer's account. If the customer has written checks on that original deposit, the bank must reverse the deposit and also return those checks intended to be paid by the deposit. A bounced check is costly and inconvenient to both the customer and the bank. Hold policies are legitimately established to avert this situation.

Even though a financial institution will retain the right to chargeback unpaid items after the expiration of hold periods, this right will serve no useful purpose if the consumer has already withdrawn the funds. Further, what useful purpose does a "hold" serve if the financial institution can debit the customer's account after the "hold" has expired?

A final concern with the proposed HR 2443 surrounds the issue of mandating when interest will begin being paid on deposited funds. Each bank typically establishes an interest payment policy dictated by operational considerations and adjusts the rate of interest and account costs accordingly. Certainly, the legislation of such policies will disrupt this practice and costs or interest rates will be correspondingly adjusted. Essentially, the consumer is not likely to see any appreciable benefit and could even suffer to the extent that legislative mandates disturb sound existing business practices.

Because of the deficiencies in HR 2443 cited above and the current efforts by regulatory agencies to mitigate deposit hold problems, it is our opinion that such legislation is not appropriate. Additionally, the competitive marketplace for financial services is excellent in weeding out institutions which do not offer reasonable customer service at competitive prices. There is no justification in passing legislation which is designed to address the uncommon abuses of a handful of institutions at the expense of all. In the end, the consumer will pay a price for greater regulation and the benefits will not be commensurate with the costs.

We appreciate the opportunity to offer these comments on the proposal. We are hopeful that this point of view will be considered in deliberations on this important matter.

Sincerely,

Berne Hart

N. Berne Hart

4-B—Rocky Mountain News Tues., Oct. 8, 1985 Denver, Colo.

SPECIAL REPORT/DENVER'S CHECKING WAR

Financial Institution	No Interest**	NOW***	Super-NOW or Market***	Check Holding Period****	Other Services
Bank Western	0/$4	$300/5.25%/$5	$2,500/6.5%/no fee	3-14 days	teller machines/check guarantee/ overdraft ($9 fee, 18% interest)
Boettcher	N/A	N/A	$7,500/market/no fee	N/A	$500 minimum for all checks
Central-Denver	$600/$6	$1,000/5.25%/$6-$7	$2,500/6.5%/$2.50	3-10 days	teller machines/check guarantee/ overdraft debit card (No fee, 21% interest)check safekeeping
CNB-Denver	$400/$4	$1,000/5.25%/No fee	$1,000/6.5%/$8-$10	No holding	teller machines/check guarantee/ overdraft/debit card (No fee/18% interest) check safekeeping
Columbia Savings	N/A	$500/5.25%/$7.50-$9	N/A	5-14 days	teller machines/check guarantee/ overdraft (No fee, 21% interest)
Dain Bosworth	N/A	N/A	$10,000/market/$50*	N/A	debit card (no fee), $500 minimum for all checks
Denver National	$800/$7.50	$1,000/5.25%/$10	$1,500/7.25%/no fee	3-10 days	teller machines/check guarantee/ overdraft/ debit card ($12 fee, 18% interest)
Empire Savings	$500/$5	$800/5.25%/$7.50	$1,000/market/$10	5-10 days	teller machines/check guarantee/ overdraft/debit card (No fee, 18% interest)
FirstBank-DTC	$200/$5-$7	$300/5.25%/$6-$8	$2,500/6%/$10	No holding	teller machines/check guarantee/ overdraft ($5 fee, 21% interest) check safekeeping
First Interstate	$600/$6*	N/A	$1,000/6.0%/$10	3-10 days	teller machines/check guarantee/ overdraft debit card ($15 fee, 18% interest) check safekeeping
Key Savings	$500/$5	N/A	$2,500/6.25/no fee	7-14 days	check guarantee/overdraft/ debit card (No fee, 18% interest)
Merrill Lynch	N/A	$5,000/7.96/no fee	$20,000/market/$50*	N/A	debit card (No fee) NOW account has $500 check limit
Metrobank	$500/$5	$1,000/5.75%/$8	$2,500/6.25%/$8	5-14 days	teller machines/check guarantee/ overdraft/debit card ($12 fee,18% interest)
Silverado Banking	0/$3	N/A	$1,000/5.25-6%/$7.50	7-14 days	teller machines/check guarantee/ overdraft debit card (No fee,18% interest)
United-Denver	0/$3	$900/5.25%/$7	$2,500/6.5%/$7	3-10 days	teller machines/check guarantee/ overdraft debit card ($5 fee, 21% interest) check safekeeping

* Annual fee. All others are monthly

**Minimum balance/service fee if drops below minimum for non-interest bearing accounts.

***Minimum balance/interest rate/service fee if drops below minimum for interest-bearing accounts.

****Time checks are held before funds are available to client